(10)

No. 05-1575

Supreme Court, U.S.
FILED
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In The
Supreme Court of the United States

DORA B. SCHRIRO, ET AL.,

Petitioners,

vs.

JEFFREY TIMOTHY LANDRIGAN,
a.k.a. BILLY PATRICK WAYNE HILL,

Respondent.

On Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

JOINT APPENDIX

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Case No.: CR1990-000066-A

January 2, 1990	Indictment
February 27, 1990	Notice of Intent to Seek the Death Penalty
June 28, 1990	Verdict
June 28, 1990	Verdict
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October 19, 1990	Response to State's Sentencing Memorandum
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Case No.: CR-90-0323-AP

November 1, 1990	Notice of Appeal From Superior Court
September 16, 1991	Appellant's Opening Brief
October 11, 1991	Appellee's Answering Brief
February 25, 1993	Opinion
March 12, 1993	Motion for Reconsideration
April 13, 1993	Motion for Reconsideration = Denied
December 1, 1993	Mandate

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Case No.: 2:96-cv-02367-ROS

October 16, 1996	Petition for Writ of Habeas Corpus
December 15, 1999	Order Dismissing With Prejudice the Habeas Corpus Petition
March 1, 2000	Notice of Appeal

RELEVANT DOCKET ENTRIES FOR THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Docket No.: 00-99011

November 8, 2001	Argued and Submitted
November 28, 2001	Filed Opinion: Affirmed
February 14, 2005	Filed order that case be reheard en banc
March 24, 2005	Argued and Submitted
March 8, 2006	Filed Opinion: Affirmed in Part, Reversed in Part, and Remanded
June 16, 2006	Received Notice from Supreme Court: Petition for Certiorari Filed
October 3, 2006	Received Notice from Supreme Court, Petition for Certiorari Granted

IN THE SUPERIOR COURT OF
THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

STATE OF ARIZONA, Plaintiff, vs. JEFFREY TIMOTHY LANDRIGAN, Defendant.	)	No. CR 90-00066 CR-90-0323-AP

Phoenix, Arizona
May 1, 1990

BEFORE: The Honorable CHERYL K. HENDRIX

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Copy Prepared for Appeal

By: Pauline Wood
Official Court Reporter

* * *

[34] Q I'm sorry. Please explain.

A Well, the man was in jail for a City of Phoenix Police Department charge of a stolen vehicle situation. It is routine Phoenix Police Department procedure at the time of booking to obtain what is referred to as major case fingerprints. As I had spoken to him in custody and knew he was there for a Phoenix Police arrest, fingerprints obviously of his were on file. So the previous 10 days' request was a clerical error of some type.

Q In any event, a fingerprint comparison was eventually done?

A Yes, it was.

Q Were any of the latent fingerprints discovered at the crime scene matched to the Defendant?

A Several.

Q At what point did the – well, let me ask it a different way.

Did you at some time arrest Mr. Page for the death or murder of Chester Dyer?

A I told Mr. Landrigan before leaving him that I would charge him with second degree murder in the death of Chester Dyer, and I did so at that time. That's referred to as Page 2 to a booking.

Q So following your interview with Mr. Dyer (sic) is when you placed him under arrest and booked him on the charge of murder in the second degree?

* * *

IN THE SUPERIOR COURT OF
THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

STATE OF ARIZONA,	)	
	)	
Plaintiff,	)	No. CR 90-00066
	)	CR-90-0323-AP
vs.	)	
	)	
JEFFREY TIMOTHY LANDRIGAN,	)	
	)	
Defendant.	)	

Phoenix, Arizona
June 18, 1990
6:10 p.m.

BEFORE: The Honorable CHERYL K. HENDRIX

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Copy
Prepared for Appeal

By: Pauline Wood
Official Court Reporter

* * *

[9] THE COURT: The bailiff has a supply, I think, of little forms he signs on my behalf to verify that you have been here on such and such days. And when we are not in session, for those who are employed, you should go get reacquainted with your employer.

All right?

Ladies and Gentlemen, you are excused for the evening. Thank you for whatever patience you have demonstrated. I know it's been a long day for you. Have a good evening. We will see you at 1:15 tomorrow.

(The jurors left the courtroom for the evening recess.)

THE COURT: Mr. Farrell, I believe you indicated that you would like to put on the record the offers that have been made by the State and rejected by you and your client.

MR. FARRELL: Yes, Your Honor. So the record is clear, it's – so the record will reflect that the State as well as myself have had some attempt at some agreements concerning a possible plea in this particular case, there was an offer made by the State to my client of second degree murder with the stipulated 20-year sentence. That was rejected by my client.

And the latest offer, I believe, which has since been rejected by my client, was an offer of second degree murder with priors. The sentencing range in that case is anywhere from 15 years up to 25 years. That would have been left to the discretion of the Court. And that's been rejected by my client.

* * *

IN THE SUPERIOR COURT OF
THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

STATE OF ARIZONA,	)	
Plaintiff,	)	
	)	No. CR 90-00066
vs.	)	
JEFFREY TIMOTHY LANDRIGAN,	)	
Defendant.	)	

Phoenix, Arizona
July 24, 1990

BEFORE: The Honorable CHERYL K. HENDRIX

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Copy

Pauline Wood
Official Court Reporter

* * *

[7] July 24, 1990 THE COURT: CR 90-00066, State of Arizona against Jeffrey Timothy Landrigan. This is the time set for hearing defendant's motion to continue the presentence hearing and sentencing set for this coming Friday.

MR. SANDLER: Jeff Sandler on behalf of the State.

MR. FARRELL: Dennis Farrell on behalf of the defendant, who is present in custody, Your Honor.

At this time I would be asking the Court for a 30-day continuance. Quite a bit of information is still being requested concerning the background of my client and we

need additional time to obtain that information in order to proceed with the sentencing aspect of my client's case.

THE COURT: I can't give you 30 days. That falls on a Sunday, from today – from Friday.

MR. FARRELL: Then perhaps the Friday before the Sunday, Your Honor?

THE COURT: State's position?

MR. SANDLER: Is that August 24th we are talking about?

THE COURT: I think so.

MR. SANDLER: That's fine.

THE COURT: Mr. Landrigan?

THE DEFENDANT: That's fine with me.

* * *

IN THE SUPERIOR COURT OF
THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

STATE OF ARIZONA,	)	
Plaintiff,	)	
	)	No. CR 90-00066
vs.	)	CR-90-0323-AP
JEFFREY TIMOTHY LANDRIGAN,	)	
Defendant.	)	

Phoenix, Arizona
August 24, 1990

BEFORE: The Honorable CHERYL K. HENDRIX

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Copy Prepared for Appeal

By: Pauline Wood
Official Court Reporter

* * *

[12] THE COURT: Do you have any certified documents?

MR. SANDLER: They were previously admitted at trial.

THE COURT: All right.

Mr. Farrell, do you have anything in mitigation you would like to present at this time?

MR. FARRELL: Your Honor, not at this particular time. As I stated in my motion, I'm still awaiting hospital records. In the presentation of mitigating factors, rather than presenting it piecemeal, I wish to present it all at one time.

THE COURT: When?

MR. FARRELL: Your Honor, at this particular time I'm sorry about the delay. As I have already advised the Court, I sent for these documents three-and-a-half months ago. A letter – letters were sent out on May 3rd. Not having received it by August 23rd, it shows the hospitals are not very prompt or considerate. I have talked with the hospital that I'm awaiting all of the medical records. They have been having some problem getting copies because it's on microfiche. I talked with them last week and they are making every effort to send them to me as soon as possible. However, as soon as possible for hospitals. I have no idea how long it will take them. I'm making every effort. If given a [13] 30-day continuance at this time to make sure I have all of those records, I will be able to proceed at that particular time.

THE COURT: Do you want to do it Monday, the 24th, or Tuesday, the 25th? That will make it 31 days, I guess, or 32.

MR. FARRELL: Would that be in the afternoon, Your Honor?

THE COURT: Yes.

MR. FARRELL: Perhaps Tuesday, the 25th.

MR. SANDLER: I think that's okay, Judge. I'm supposed to start a trial in front of Judge Howe on the 24th. I don't believe that that's really going to happen, though.

THE COURT: Mr. Landrigan, do you have any objections to a 32-day continuance?

THE DEFENDANT: No.

THE COURT: Then it's ordered continuing this hearing until Tuesday, September 25th, at 1:30 in the afternoon.

Mr. Farrell, do you have any guesstimate at this point in time how long the hearing might take?

The Court assumes by your silence you do not. That's fine.

Thank you, gentlemen. We stand at recess.

Mr. Farrell, is there any chance I could get [14] a presentence memorandum?

MR. FARRELL: Yes, Your Honor, with any additional factors that are mitigating from the hospital I may include in a separate supplemental memorandum.

THE COURT: Thank you.

(The proceedings were concluded.)

IN THE SUPERIOR COURT OF
THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

STATE OF ARIZONA,	)	
	)	
Plaintiff,	)	No. CR 90-00066
	)	
vs.	)	
	)	
JEFFREY TIMOTHY LANDRIGAN,	)	
	)	
Defendant.	)	

Phoenix, Arizona
September 25, 1990

BEFORE: The Honorable CHERYL K. HENDRIX

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Copy

Pauline Wood
Official Court Reporter

* * *

[9] September 25, 1990 THE COURT: CR 90-00066, State of Arizona against Jeffrey Timothy Landrigan. At 1:30 was to be the time set for sentencing and presentence hearing. I have received a motion to continue.

MR. SANDLER: Jeff Sandler appearing for the State.

MR. FARRELL: Dennis Farrell on behalf of the defendant, who is present in custody, Your Honor.

Your Honor, I asked for a continuance because again there was a delay in seeking vital hospital records. I have received those records, which are somewhat extensive, over a hundred pages of typewritten material that I

received last night. Consequently, I would be asking for a 30-day continuance in order to accumulate all the information that I have received to incorporate in the sentencing memorandum on behalf of my client.

THE COURT: Is that all right with you, Mr. Landrigan?

THE DEFENDANT: Yeah.

THE COURT: Any objection from the State?

MR. SANDLER: No, Your Honor.

THE COURT: It's ordered – is the 25th of October in the afternoon okay?

MR. SANDLER: That's fine.

MR. FARRELL: That will be fine, Your Honor.

* * *

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IN THE SUPERIOR COURT
OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

STATE OF ARIZONA,	) No. CR-90-00066
Plaintiff,	) DEFENDANT'S SENTENCING MEMORANDUM CONCERNING MITIGATION ARS §13-703(G)
v.	
JEFFEREY* LANDRIGAN,	
Defendant.	) (Filed Oct. 19, 1990)
	) Assigned to the Hon. CHERYL K. HENDRIX

Defendant by and through counsel undersigned, takes this opportunity to point out different legal and factual considerations which he believes are relevant to the Court's decision on a mitigated sentence in this case. We fully recognize the Court heard the testimony at the trial, and we will attempt to show only those facts necessary for

* Any typographical, grammatical, and/or incorrect punctuation found in the Joint Appendix were intentionally left to show how the original document actually appeared.

this purpose. What we, also, will do is point those legal arguments which we believe are critical in this case.

ARS §13-703(G) reads in part:

> "G. Mitigating circumstances shall be any factors proffered by the defendant or the State which are relevant in determining whether to impose a sentence less than death, including any aspect of the defendant's character, propensities or record of any of the circumstances of the offense . . . "

The Court has the power to differentiate among offenders with a view to individualize their treatment and to safeguard the offender against excessive, disproportionate or arbitrary punishment. What is important at the sentence selection stage is an individualized determination on the basis of the character of the individual and the circumstances of the crime. *Zant v. Stephens*, 462, U.S. 862, 879, 103 S.Ct. 2733, 2743, 77 L.Ed.2d 235, (1983).

The Supreme Court has previously recognized that "[f]or the determination of sentences, justice generally requires consideration of more than the particular acts by which the crime was committed and that there be taken into account the circumstances and the offense together with the character and propensities of the offender." *Pennsylvania ex rel. Sullivan v. Ash* 302 U.S. 51 55, 58 S.Ct. 59, 60, 82 L.Ed. 43 (1937).

Consideration of both the offender and the offense in order to arrive at a just and appropriate sentence has been viewed as progressive and humanizing development. The prevailing practice of individualizing sentencing determinations generally reflects not only an enlightened policy, but also the constitutionally indispensable part of the process of inflicting the ultimate penalty. *Woodson v. North*

Carolina, 428 U.S. 280, 304, 96 S.Ct. 2978, 2991, 49 L.Ed.2d 944 (1976).

A process that accords no significance to relevant facets of the character and record of the individual offender or the circumstances of the particular offense excludes from consideration in fixing the ultimate punishment the possibility of compassionate or mitigating factors stemming from the diverse frailties of humankind. It treats all persons convicted of a designated offense not as uniquely individual human beings, *but as members of a faceless, undifferentiated mass to be subjected to the blind infliction of the penalty of death*, *Woodson v. North Carolina*, 428 U.S. 280, 304, 96 S.Ct. 2978, 2991, 49 L.Ed.2d 944 (1976). These principles were reaffirmed by the Supreme Court in *California v. Brown*, ___ U.S. ___, 107 S.Ct. 837 (1988).

The *ABA Standards Relating to Sentencing Alternatives and Procedures* states:

> "The sentence imposed in each case should call for the minimum amount of custody or confinement which is consistent with the protection of the public, the gravity of the offense and the rehabilitative needs of the defendant."

We direct the Court's attention to two federal cases:

First, *United States v. Wardlaw*, 576 F.2d 932 (1978) where the Court stated:

> "Sentences dictated by a 'mechanistic' concept of what a particular type of crime invariably deserves have been held to fall within this exception: a judge holding such fixed ideas is presumably closed to individual mitigating factors." 576 F.2d at 538.

* * *

> "The Court's duty to 'individualize' the sentence simply means that, whatever, the judge's thoughts as to the deterrent value of a jail sentence, he must in every case reexamine and measure that view against the relevant facts and other important goals such as the offender's rehabilitation. Having done so, the district judge must finally decide what factors, or mix of factors, carry the day. While the judge's conclusions as to the deterrence may never be so unbending as to forbid relaxation in an appropriate case, they may nonetheless on occasion justify confinement although other factors point in another direction." 576 F.2d at 538.

The second case, *United States v. Barker*, 771, F.2d 1362 (9th Cir. 1985), where again the Ninth Circuit Court of Appeals reaffirmed that a criminal sentence must reflect an individualized assessment of an individual defendant's culpability rather than a mechanistic application of a given sentence to a given category of crime. The Court stated in this regard:

> "[P]unishment should fit the offender and not merely the crime. the belief no longer prevails that every offense in a like legal category calls for an identical punishment without regard to the past life and habits of a particular offender. The sentencing judge is required to consider all mitigating and aggravating circumstances involved. There is a strong public interest in the imposition of a sentence based upon an accurate evaluation of the particular offender and designed to aid in his personal rehabilitation. Thus, appellate courts have vacated sentences reflecting a preconceived policy always to impose the maximum penalty for a certain crime." 771 F.2d at 1365.

In this case, the sentencing memorandum of the State is a superficial report with no specific facts about the defendant which would aid the Court in making an accurate evaluation. There is no indication that the County Attorney seriously considered any facts in mitigation. In light of this, we refer the Court, again, to the *Barker* case of the doctrine of "General Deterrence".

> "Nevertheless, deterrence as a sentencing rationale is subject to limitation. Tailoring punishment to the individual criminal may reduce the efficacy of deterrence, but that reduction is an inevitable cost of a system that eschews mechanistic punishment. General deterrence is a legitimate aim, but it has never been the sole aim in imposing sentence." 771 F.2d at 1368.

A sentencer may not refuse to consider or preclude from consideration any relevant mitigating evidence, including non-statutory circumstances. *Hitchcock v. Dugger*, 481 U.S. ___, 107 S.Ct. 1821, 95 L.Ed.2d 347 (1987). Under ARS §13-703, a trial court is not free to disregard any mitigating factor. This includes any aspect of a defendant's character or record that is offered as a basis for a sentence less than death. *Lockett v. Ohio*, 438 U.S. 586, 98 S.Ct. 2954, 57 L.Ed.2d 973 (1987); *Eddings v. Oklahoma*, 445 U.S. 104, 102 S.Ct. 869, 71 L.Ed.2d 1 (1982); *Skipper v. South Carolina*, 476 U.S. 1, 106 S.Ct. 1669, 90 L.Ed.2d 1 (1986). If a court does, it violates a defendant's rights under the Eighth and Fourteenth Amendment to the United States Constitution. *State v. Smith*, 136 Ariz. 273, 655 P.2d 995 (1983). This ensures that the death penalty is not imposed despite factors that may call for a less severe penalty. *State v. McMurtrey*, 136 Ariz. 93, 664 P.2d 637 *cert. den.*, 464 U.S. 858, 104 S.Ct. 180, 78 L.Ed.2d 161 *appeal after remand* 143 Ariz. 71, 691

P.2d 1099 (1983) *cert. den.*, 107 S.Ct. 1359 (1984). *See also, State v. McCall*, 139 Ariz. 147, 677 P.2d 920 *cert. den.*, 467 U.S. 1220, 104 S.Ct. 2670, 81 L.Ed.2d 375 (1983); *State v. McDaniel, supra.*

The defendant raises the following aspects of his character, propensities, record, and the following circumstances of the offense, as mitigating evidence sufficiently substantial to call for leniency:

1. The Defendant's Conduct While incarcerated and his Conduct During Trial.

The Maricopa County Sheriff's Department has had no difficulties of any kind with the defendant. During trial, the defendant's demeanor was respectful, proper and controlled. He conducted himself while under extreme stress, in a composed and dignified manner.

A person's behavior is relevant evidence in mitigation of punishment. *State v. Watson*, 129 Ariz. 60, 629 P.2d 943 (1981); *Skipper v. South Carolina*, 476 U.S. 1, 106 S.Ct. 1669, 90 L.Ed.2d 1 (1986).

2. Defendant's State of Intoxication, ARS §13-703(G)(1).

The testimony at trial indicated that the victim invited the defendant to his apartment and while at the apartment both the victim and the defendant drank quite a bit as well as smoked marijuana and did drugs. The defendant, Mr. Jeffrey Landrigan, has a long history of substance abuse concerning alcohol as well as drugs. As part of the evidence presented to this to Court to consider mitigation there are two exhibits labeled Exhibit A and

Exhibit B. Each of those Exhibits are partial medical records of the defendant for his substance abuse while as a teenager. Exhibit A are part of the medical records from the Jane Phillips Episcopal Memorial Medical Center and they concern the defendant, Jeffrey Landrigan, when he was admitted in February of 1977 at the age of fourteen. This report additionally points out the fact that Jeffrey Landrigan had been smoking marijuana excessively since the ninth grade. The report goes on to advise the doctors that he had recently begun taking Quaaludes.

Exhibit B involves the defendant being admitted to Saint John's Medical Center in Tulsa, Oklahoma, in July of 1979. At that time the defendant was seventeen. He was admitted to the Medical Center and remained there for over a month. At that time he was diagnosed as an alcoholic and he was specifically treated at the Alcohol Treatment Program. The report goes on to state that the defendant had a history of very severe alcoholism dating back, at least, six months prior to his admission to the hospital. These reports revealed that Jeffrey revealed to the Doctors that he started drinking heavily at the age of thirteen. Additionally, these medical reports reveal that Jeffrey suffered from blackouts and that Jeffrey attempted to get drunk, whenever he drank. And that he attempted to get high on whatever mood-altering chemical was available to him.

From the medical records it appears that the defendant has been suffering from a substance abuse problem since the age of fourteen. The defendant's acute alcohol intoxication history, as well as his intoxication on the night the victim was killed, substantially impaired the defendant's ability to appreciate the wrongfulness of his conduct. As such, it should be found to be a mitigating

circumstance sufficiently substantial to call for leniency. *State v. Gilles*, 142 Ariz. 564, 571, 691 P.2d 655, 662 (1984). *State v. Wood*, 648 P.2d 71, (Utah 1978); *Burrows v. State*, 640 P.2d 533 (Oklahoma 1982).

3. The Defendant's Ability to Appreciate the Wrongfulness of his Conduct was Substantially Impaired, ARS §13-703(G)(1).

The defendant has presented evidence of a long history of substance abuse. This evidence is documented by both of the Exhibits that are attached to this Memorandum concerning the defendant's substance abuse starting at the age of fourteen. These hospital documents further substantiate that the defendant, at the age of seventeen, suffered from blackouts. These medical reports further advise that the defendant, even at the age of seventeen, confessed to the doctors that when he did drink, he drank excessively in order to get drunk. Or if he was taking drugs, he would take whatever mood-altering drugs were available in order to get high. The evidence at trial, again, showed the defendant as well as the victim were engaging in drinking alcohol as well as doing drugs. These medical reports clearly show that for the past fifteen years the defendant has had a very serious substance abuse problem that continues to plague him. The defendant's inability to appreciate any wrongfulness of his conduct based on his intoxication and his ability to conform his conduct to the requirements of the law, would have been a complete defense. However, the voluntary intoxication by the defendant made a defense of insanity unavailable to the defendant.

In terms of mitigation there is no question that his capacity was significantly impaired. In this regard, the

defendant points out four cases where the court has found substantial impairment.

First, *State v. Doss*, 116 Ariz. 156, 568 P.2d 1054 (1977). The Court found the mental condition of the defendant, which was induced by voluntary consumption of alcohol, significantly impaired his capacity and therefore, was a mitigating circumstance sufficiently substantial to call for leniency.

In *State v. Brookover*, 124 Ariz. 38, 601 P.2d 1322 (1979), the court found that the defendant suffered from a substantial mental impairment due to brain lesions and reduced a death sentence to life imprisonment.

In *State v. Graham*, 135 Ariz. 209, 660 P.2d 460 (1983), the court found substantial mental impairment due to drug addiction, neurological problems, vulnerability to influence, and a lack of prior record of violence to be factors which called for leniency.

Finally, *State v. Stevens*, 158 Ariz. 595, 764 P.2d 724 (1988), the court found the defendant, due to drugs and alcohol use, was substantially impaired and reduced a death sentence to life imprisonment.

Considering all of these factors we submit that the Court find this condition of defendant to be sufficiently substantial to call for leniency as did the Supreme Court in *Stevens*.

4. Evidence of a Difficult Family History.

As the Court became aware during trial, through the testimony of Mrs. Gibson, the defendant was given up for adoption by his natural mother at the age of only a few

months. It is anticipated that Mrs. Gibson will also testify at the mitigation hearing to give additional aspects concerning her pregnancy and some significant factors for the Court to consider concerning the defendant's prenatal medical condition. The defendant was then adopted by Mr. and Mrs. Landrigan. As is pointed out in each of the Exhibits attached to this Memorandum, the defendant considered his adoptive mother an excessive alcoholic. He described her as coming home from work every day and starting to drink whiskey at five o'clock. The defendant further confided to the doctors that his mother was a strong disciplinarian and would slap and beat him very frequently for any kind of misconduct on his part. In fact, as documented in Exhibit A, the defendant started running away from home at the age of fourteen. The Court should consider evidence of the turbulent family history of the defendant as mitigation. *Eddings v. Oklahoma*, 455 U.S. 104, 102 S.Ct. 869, 71 L.Ed.2d 1 (1982).

5. Love of Family.

As anticipated in the mitigation hearing the Court will hear from relatives of the defendant expressing their feelings and love for him. He also loves them. In *State v. Carriger*, 692 P.2d at 1011, the court found the love of the defendant's family for him and his love for them a mitigating factor.

6. No Evidence of Premeditation.

As the Court is aware, the defendant was convicted of felony murder. There was no evidence at trial that this murder was premeditated. In fact, the testimony of Detective Chambers, who was the investigating officer, indicated that

it was probably the victim's unwarranted homosexual advances that precipitated the argument leading to his death.

7. Cumulative Effect of all of the Above Mitigating Circumstances.

In *State v. Correll,* 148 Ariz. 468, 715 P.2d 721 (1985), this Court stated that mitigating circumstances will be considered individually and "in combination". Here, the weight of all of the factors in combination clearly would bring the mitigating evidence above the "Plimsoll Line" where is its sufficiently substantial to call for leniency. The finding of no mitigating factors would be an abuse of the trial court's discretion. That abuse violates the defendant's Eight and Fourteenth Amendment rights to the United State's Constitution and Article 2, Sections 1, 4 and 15 of the Arizona Constitution. *See also, Mills v. Maryland,* ___ U.S. ___, 108, S.Ct. 1860. Also, *State v. Rockwell*, 36 Ariz. Adv. Rep. 17 (1989).

PROPORTIONALITY REVIEW

In deciding whether to impose the death penalty, the Court in addition to finding aggravation-mitigation, the Court must also decide "whether the sentences of death are excessive or disproportionate to the penalty imposed in similar cases considering both the crime and the defendant." *State v. Richmond*, 560 P.2d 41, 51 (1976) *cert. den.* 433 U.S. 915 (1977).

Proportionality review is distinct from the review of aggravating and mitigating review assesses whether the

death sentence is proportional in comparison to the offense. In contrast, the proportionality review occurs in cases where the sentence is not disproportionate to the crime but may be disproportionate to the sentence given other defendants.

In this case we ask the Court to compare the following cases with the defendant's case. First, we ask the Court to compare cases where the Supreme Court affirmed the death penalty. Both cases arise out of Maricopa County.

***State v. Beaty*, 158 Ariz. 232, 762, P.2d 519 (1988).**

The defendant was convicted of one count of First Degree Murder and Sexual Assault of a 13-year-old female newscarrier.

State v. Fulminante*, *11 Ariz. Adv. Rep. 7 (1988).

Later reversed on other grounds, 38 Ariz. Adv. Rep. 16)

The Defendant was convicted of one count of First Degree Murder of his stepdaughter. His stepdaughter had been shot twice at close range. There was also evidence that he choked her, sexually assaulted her, and made her beg for her life.

Next, the Court should look at two cases where the Supreme Court vacated death sentences and sentenced the defendant to life imprisonment.

***State v. Stevens*, *supra*.**

The Court vacated a sentence with an aggravated factor of pecuniary gain and a mitigating factor of impaired mental capacity.

State v. Rockwell, supra.

The Court vacated a sentence with an aggravating factor of pecuniary gain and mitigating factors of the defendant's character and back ground, his age and the unique circumstances of his conviction.

Next, we should ask the Court to look at two cases in Maricopa County where the trial court, despite finding of aggravating circumstances, sentenced the defendant to life imprisonment because the court found the mitigating circumstances were substantially sufficient to call for leniency.

***State v. Corey Tilden*, CR-87-11506 before Judge Gloria Ybarra.**

There, as here, there was a double homicide of two elderly people in North Phoenix. It was for pecuniary gain. However, the Court found that mental impairment of Corey Tilden and his turbulent childhood were sufficiently substantial to call for leniency.

***State v. James Lee White*, CR-148926, (1986) before Judge Stanley Goodfarb.**

There, the defendant was convicted of two counts of First Degree Murder of two dancers. There, the court found the aggravating factors were substantially outweighed by the mitigating circumstances of the defendant's background and the trial court sentenced on two *concurrent* life sentences.

Finally, we ask the Court to consider ***State v. Walter Spear, CR-88-08980***, where the State extended Mr. Spear a plea. He was convicted of three counts of First Degree Murder of his wife and two children.

In conducting the Proportionality Review, we suggest the Court review the decision in ***Adamson v. Ricketts***, 865 F.2d 1011 (1988), where the Court discusses the inconsistent application – 865 F.2d at 1037.

CONCLUSION

In conclusion, counsel for Jeffrey Landrigan, asks the Court to consider several passages from Clarence Darrow's Sentencing Speech in 1924 in the Leopold and Loeb murder trial from the book, *Attorney for the Damned*, Simon and Schuster, N.Y. 1957. In discussing justice, Darrow stated:

> "Can you administer law without consideration? Can you administer what approaches justice without it? Can this Court or any court administer justice by consciously turning his heart to stone and being deaf to all the finer instinct which move men? Without those instincts I wonder what would happen to the human race?
>
> If a man could judge a fellow in coldness without taking account of his own life, without taking account of what he knows of human life, without some understanding – how long would we be a race of real human beings? It has taken the world a long time for man to get to even where he is today. If the law was administered without any feeling of sympathy or humanity or kindliness, we would begin our long, slow journey back to the jungle that was formerly our home." p.48.
>
> He goes on to say:
>
> "Do I need to argue to your Honor that cruelty only breed cruelty? – that hatred only causes hatred? – that if there is any way to soften this

> human heart, which is hard enough at its best, if there is any way to kill evil and hatred and all that goes with it, it is not through evil and hatred and cruelty; it is through charity, and love and understanding?
>
> How often do people need to be told this? Look back at the world. There is not a man who is pointed to as an example to the world who has not taught it. There is no a philosopher, there is not a religious leader, there is not a creed that has not taught it. This is a Christian community, so-called, at least it boasts of it, and yet they would hang these boys in a Christian community. Let me ask the court, is there any doubt about whether these boys would be safe in the hand of the founder of the Christian religion? It would be blasphemy to say they would not. Nobody could imagine, nobody could even think of it. And yet there are men who want to hang them for a childish purposeless act, conceived without the slightest malice in the world." *Id.*, at 52.

The defense asserts that mere revenge is not recognized as adequate basis for sentencing. The objective of sentencing is, and should always be, to avoid offenses in the future, not generally, but in this individual case.

We, again, ask the Court to refer to the *Barker* case where the court stated:

> "Central to our system of values and implicit in the requirement of individualized sentencing is the categorical imperative that no person may be used merely as an instrument of social policy, that human beings are to be treated not simply as a means to a social end like deterrence, but also – and always – as ends in themselves. See,

e.g., I. Kant, *Groundwork of the Metaphysics of Morals*, 66-67 (H. J. Paton trans.2d ed 1964).

> **(Act in such a way that you always treat humanity, whether in your own person or in the person of any other, never simply as a means, but always at the same time as an end);**

see also, I. Kant, *Philosophy of Law*, 196 (W. Hastie trans. 1887)

> **(One man ought never to be dealt with merely as a means subservient to the purpose of another):**

accord *United States v. Barker*, 514 F.2d 208, 231 (D.C. cir. 1975) (en banc) (Baselon, J., concurring); L. Tribe, *American Constitutional Law*, 463 (1978); R. Dworking, *Taking Rights Seriously*, 198 (1977). 771 F.2d 1368-1369."

Again, quoting Clarence Darrow:

> What is my friend's idea of justice? He says to this court, whom he says he respects – and I believe he does – Your Honor, who sits here patiently, holding the lives of these two boys in your hands:
>
> 'Give them the same mercy that they gave to Bobbie Franks.'
>
> Is that the law? Is that justice? is this what [illegible]unt should do? Is this what a state's at[illegible]ey should do? If the state in which I live is not any kinder, more humane, more considerate, more intelligent than the mad act of these two boys, I am sorry that I have lived so long. p.38.

What we are asking this Court to do is keep in mind that this is an individual, Jeffrey Landrigan, who is being sentenced; Jeffrey Landrigan, an individual who has an individual background, Jeffrey Landrigan, an individual convicted of individual offenses. The Court must stay away from generalizations which may have some validity in some cases. The key is the defendant is capable of responding to rehabilitation. Justice requires that the sentence imposed must also be capable of achieving his personal rehabilitation.

The defendant concludes with, again, these thoughts from Darrow:

> "We are satisfied with justice, if the court knows what justice is, or if any human being can tell what justice is. If anybody can lock into the minds and hearts and the lives and the origin of these two youths and tell what justice is, we would be content. But nobody can do it without imagination, without sympathy, without kindliness, without understanding, and I have faith that this Court will take this case, with his conscious, and his judgment and his courage and save these boys' lives." p.49.
>
> * * *
>
> " . . . And just I ask these boys get mercy by spending the rest of their lives in prison, year following year, month following month, and day following day, with nothing to look forward to but hostile guards and stone walls? It ought not to be hard to get that much mercy in any court in the year 1924." p.44.
>
> * * *

> "I am pleading for the future; I am pleading for a time when hatred and cruelty will not control the hearts of men, when we can learn by reason and judgment and understanding and faith that all life is worth saving, and that mercy is the highest attribute of man." pp. 86-87.

RESPECTFULLY SUBMITTED this 19 day of October, 1990.

DEAN W. TREBESCH
MARICOPA COUNTY
PUBLIC DEFENDER

By: /s/ Dennis Farrell
Dennis M. Farrell
Deputy Public Defender

Copy of the foregoing
mailed/delivered this
19 day of October, 1990, to:

The Hon. CHERYL K. HENDRIX
Judge of the Superior Court
Central Court Building
201 West Jefferson Street
Phoenix, AZ 85003

JEFF SANDLER
Deputy County Attorney
111 West Monroe, 15th Floor
Phoenix, AZ 85003

By: /s/ Dennis M. Farrell
Dennis M. Farrell
Deputy Public Defender

EXHIBIT B
B-1

[LOGO]

ST. JOHN MEDICAL CENTER
[ILLEGIBLE] SOUTH UTICA AVE. • TULSA, OKLAHOMA 74104

AN EQUAL OPPORTUNITY
EMPLOYER M/F, HANDICAPPED

ADMISSION FORM		STRICTLY NO REPORT		[ILLEGIBLE]
9 0260723	ADMIT DATE 7-19-79	[ILLEGIBLE]	[ILLEGIBLE]	[ILLEGIBLE] 8/17/79
			[ILLEGIBLE]	[ILLEGIBLE] ACCOUNT NO.
COST CENTER 933	[ILLEGIBLE] 0265	[ILLEGIBLE] 1	[ILLEGIBLE] S	[ILLEGIBLE] $107.00
		[ILLEGIBLE] YES	REASON FOR PRIVATE ROOM	COST ACCOUNT NO.
[ILLEGIBLE] 755	ATTENDING PHYSICIAN W R REID			
ADMITTING DIAGNOSIS ALCOHOLISM				
LAST NAME LANDRIGAN	FIRST NAME JEFFREY	MIDDLE INITIAL T	MAIDEN NAME	[ILLEGIBLE] NO

[ILLEGIBLE] 1630 SMYSOR, BARTLESVILLE	CITY	STATE OK	ZIP 74003	HOME PHONE 333-3984

AGE	BIRTH DATE	SEX	RACE	MARITAL STATUS
17	03 17 62	M	C	S

		SOCIAL SECURITY NO.	RELIGION	CHURCH
			P	BAPTIST NCP

EMPLOYER'S NAME	OCCUPATION	LENGTH OF EMPLOYMENT
UNEMPLOYED		

EMPLOYER'S ADDRESS	CITY	STATE	ZIP	BUSINESS PHONE

[ILLEGIBLE] LAST NAME	FIRST NAME	EMPLOYER	BUSINESS PHONE
LANDRIGAN	DOROTHY – MOTHER	PHILLIPS PETROLEUM	

LAST NAME OF OTHER RELATIVE OR FRIEND	FIRST NAME	RELATION	PHONE

ADDRESS	CITY	STATE	ZIP	PHONE

RESPONSIBLE PARTY LAST NAME	FIRST NAME	RELATIONSHIP	PHONE
LANDRIGAN	EDWARD	FATHER	SAME

RESPONSIBLE PARTY ADDRESS	CITY	STATE	ZIP	SOCIAL SECURITY NO.
SAME				

RESPONSIBLE PARTY EMPLOYER	OCCUPATION	LENGTH OF EMPLOYMENT
CITIES SERVICE	GEOLOGIST	28 YR

R P EMPLOYERS ADDRESS	CITY	STATE	ZIP	BUSINESS PHONE
BOX 300	TULSA	OK	74102	

[ILLEGIBLE]	[ILLEGIBLE]	POLICY NO.	[ILLEGIBLE]
998 EQUITABLE	G		EDWARD LANDRIGAN

[ILLEGIBLE]
CITIES SERVICE CO. PO BX 300 TULSA OK 74102

[ILLEGIBLE]	[ILLEGIBLE]	POLICY NO.	[ILLEGIBLE]
998 TRAVELERS	G		DOROTHY LANDRIGAN

SECONDARY INSURANCE ADDRESS MR. PAUL BRIGGS, C/O PHILLIPS PETROLEUM CO 125 FRANK PHILLIPS BLDG, BARTLESVILLE OK 74003

BLUE CROSS NAME	GROUP NO.	SUBSCRIBER'S NO.	EFFECTIVE DATE	TYPE CONTRACT

	[ILLEGIBLE]

MEDICARE NAME	MEDICARE NO.	HOSPITAL LAST [ILLEGIBLE] WHERE?	FROM	TO
		NO		

WELFARE [ILLEGIBLE] APPLIED	WILL APPLY	LAST ADMISSION HERE	LAST NAME AT THAT TIME
		NO	

ACCIDENTAL INJURY	WORK RELATED?	TYPE OF ACCIDENT	DATE OF ACC.	TIME OF ACC.
NO				

	PLACE OF ACCIDENT

[ILLEGIBLE] 02	DISCHARGE TYPE XXXXXXX COURTESY	ADM BY JG	PRE-ADM BY	INFO TAKEN [ILLEGIBLE] ATC VERIFICATION BY VIVIAN
PRIMARY DIAGNOSIS Alcoholism				CODE NO. 373.90
SECONDARY DIAGNOSIS				
COMPLICATIONS				
OPERATIONS				

M.E.D. [ILLEGIBLE] _____
[ILLEGIBLE] ___ [ILLEGIBLE] ___ [ILLEGIBLE] ___
F.D. ✓ D.S. [ILLEGIBLE] H.V. H.P.
Other: _____
[ILLEGIBLE] CLEARANCE 2

FOR MEDICAL RECORD USE ONLY
ABSTRACT B-1

CONDITION ON DISCHARGE
☒ ALIVE
☐ EXPIRED
☐ EXTENDED CARE

/s/ _____ [ILLEGIBLE] _____
ATTENDING PHYSICIAN
CHART COPY

B-2

[LOGO]

ST. JOHN MEDICAL CENTER
[ILLEGIBLE] SOUTH UTICA AVE. • TULSA, OKLAHOMA 74104

AN EQUAL OPPORTUNITY
EMPLOYER M/F, HANDICAPPED

DISCHARGE SUMMARY

PATIENT:	LANDRIGAN, JEFFREY	WILLIAM F. REID, M.D.
HOSPITAL NO:	9025072-3	
DATE OF ADMISSION:	7/19/79	
DATE OF DISCHARGE:	8/17/79	

SUMMARY: This 17 year old high school senior to be was admitted to St. John's Hospital, specifically to the Alcohol Treatment program on 7/19/79. He has had a history of very severe alcoholism dating back at least six months. He has also been rather heavy on the drug scene earlier with may uppers and downers. Recently, however, he had concentrated entirely on alcohol. The patient contributed and participated actively in the alcohol treatment program consisting of individual counseling, AA meetings, educational seminars, some biofeedback conditioning and detoxification. His family also became involved in the treatment process to a certain extent. There are still some lingering family problems, however that will need to be resolved.

The patient was discharged in a much improved state on 8/17/79.

FINAL DIAGNOSIS:

1. Alcoholism, severe, currently in a much improved state.

This young man will need continued follow-up in the form of counseling and participation in Alcoholic Anonymous, and perhaps family therapy. He states he has a counselor in Bartlesville that he has seen before and that he will see on a regular basis.

PROGNOSIS: Guarded.

/s/ [ILLEGIBLE]
WILLIAM R. REID, M.D. sac Ch 9
Dictated 8/18/79 Transcribed 8/26/79

DISCHARGE SUMMARY

B-3

[LOGO]

ST. JOHN MEDICAL CENTER
[ILLEGIBLE] SOUTH UTICA AVE. • TULSA, OKLAHOMA 74104

AN EQUAL OPPORTUNITY
EMPLOYER M/F, HANDICAPPED

HISTORY

PATIENT: JEFFREY LANDRIGAN, W. R. REID, M.D.
#90260723

ADMITTED: 7-19-79

CHIEF COMPLAINT: "I am drinking way too much".

PRESENT ILLNESS: This 17 year old high school senior to be, was admitted to St. Johns Hospital specifically to the Alcohol Treatment Program with a history of severe

alcoholism, dating back to 6 months ago. The patient states that he has been on the drug scene earlier, with some uppers and downers but recently has concentrated on alcohol. He has been drinking far too much and stated that he simply can not function effectively now at home or in school. He realizes that he needs some help and seems well motovated for treatment at this time.

PAST HISTORY: He is an adopted child, having been adopted at very few weeks after birth. He has no knowledge of his biological parents. He states that he gets along fairly well with his adopted parents. He has done fair in school although his concentration has not been good and he feels that he is not at all living up to his potentials. The patient denies any serious family problems and states that most of the difficulties are of "my own doing".

PAST MEDICAL HISTORY: There is no history of serious operations and no illnesses.

REVIEW OF SYSTEMS: Is essentially non-contributory.

FAMILY HISTORY: The patient has no knowledge of his biologic parents. Adopted father works for Phillips in Bartlesville.

HISTORY

B-4

[LOGO]

ST. JOHN MEDICAL CENTER
[ILLEGIBLE] SOUTH UTICA AVE. • TULSA, OKLAHOMA 74104

AN EQUAL OPPORTUNITY
EMPLOYER M/F, HANDICAPPED

PHYSICAL EXAMINATION

PATIENT: JEFFREY LANDRIGAN

PULSE: 90
RESP: 20
BP: 115/75

HEAD: NECK:	Are negative.
EENT:	The pupils are equal and react to L & A. There is no retinopathy.
EARS: THROAT:	Appear normal. There is no adenopathy.
LUNGS:	Are clear to P & A.
HEART:	Is normal sinus rhythm without murmurs.
ABDOMEN:	Is soft without masses or tenderness noted. LK&S are not palpable.
PELVIC: RECTAL:	Are not indicated at this time.
EXTREMITIES;	Are negative.
GENITALIA:	Is normal male.
NEUROLOGICAL:	DTR's are active and equal bilaterally. There is no impairment of sensory modalities. Muscle strength is adequate.
MENTAL STATUS:	The patient relates in a very cooperative manner. Speech is somewhat

hesitant, although cooherent and relevant. He is moderately depressed and tense. Orientation is intact in all spheres, Memory and general intelligence are satisfactory but concentration is mildly impaired.

IMPRESSION:

1. Alcoholism

This young man definitely needs in-patient treatment consisting of individual and group therapy, AA meetings, educational program and perhaps some detoxification, although he is not experiencing any withdrawal symptoms at this time.

/s/ [ILLEGIBLE]
W. R. REID, M.D./sd D & T 7-22-79
Ch 3

PHYSICAL EXAMINATION

B-5

[LOGO] ST. JOHNS MEDICAL CENTER
[ILLEGIBLE] SOUTH UTICA AVE • TULSA, OKLAHOMA [STAMP]

An equal opportunity employer M/F handicapped

ALCOHOL TREATMENT PROGRAM

INITIAL INTERVIEW INFORMATION

INTERVIEWER Gil Baker DATE 7/23/79

PATIENT NAME Jeff Landrigan DATE OF BIRTH 3/17/62 AGE 17

REFERRAL SOURSE Phillips Oil Co.

HOW DID PATIENT ARRIVE: Car AMB ✓ NON AMB __

WHAT CONDITION: Sober

FAMILY HISTORY

PARENT LIVING FATHER Living AGE 55

MARITAL HISTORY OF FATHER 1 time

FATHER'S OCCUPATION Chief Geologist for Cities Service

PATIENT'S OPINION OF FATHER: (STRICT, PHYSICAL LOVE, EXPECTATIONS, ETC.)

Not too strict. Lots of love. Pretty lenient. Too easy to manipulate.

ADDICTIONS – FATHER'S SIDE: None

ATTITUDE OF FATHER IN TERMS OF DRINKING, ETC. Father doesn't drink

---

B-6

FAMILY HISTORY CONT.

MOTHER LIVING: Living AGE 53

MARITAL HISTORY OF MOTHER: 1 Time

MOTHER'S OCCUPATION Works for Phillips Oil Co.

PATIENT'S OPINION OF MOTHER:

Resents mother. Mother tries to dominate but with not much success.

ADDICTIONS – MOTHER'S SIDE Mother probably has a drinking problem.

WHO WAS THE DOMINANT PARENT? Father

WHICH PARENT CLOSEST TO EMOTIONALLY? Father

SIBLINGS – BROTHERS 0 SISTERS 1

WHERE IS PATIENT IN RELATIONSHIP TO AGE? Youngest by 9 yrs.
(YOUNGEST, OLDEST, MIDDLE, ETC.)

FAMILY IS OR IS NOT AN EMOTIONALLY CLOSE ONE? Not. Jeff can be more honest with older sister.

SOCIAL ECONOMIC CONDITION WAS: Middle class

HOW WAS SEX RELATED TO CHILDREN BY PARENTS? Wasn't mentioned until girlfriend got pregnant.

B-7

ETHNIC GROUP INFORMATION CULTURAL White cauc

PROBLEM IN READING, WRITING, SPEAKING? No

PREJUDICES: None

RELIGIOUS INFORMATION

CHURCH AFFILIATION No ATTENDANCE No

DO YOU PRAY? No BELIEVE IN GOD? Yes

CONFLICTS WITH RELIGION: He hasn't paid much attention

EDUCATION HISTORY

YEARS COMPLETED Has one more year of high school

DEGREES OR CERTIFICATES? No

GRADES Poor grades and skipped alot

FAVORITE SUBJECT D.E.C.A.

WORST SUBJECT English

EXTRA CURRICULAR ACTIVITIES D.E.C.A.

POPULAR Yes

DATING 13 yrs.

PEER GROUP Fast crowd – no squares

PROBLEMS IN SCHOOL Many

EMOTIONAL Doesn't like pressure or [illegible] limits. Rebelling against authority.

DISCIPLING Has been kicked out of school about 5 times. Has skipped school alot.

DRINKING ATTITUDE Started drinking at age of 13. Got drunk when he was 14. Was a weekend drunk and then began drinking during the week.

B-8

ALCOHOL AND DRUG HISTORY

BEHAVIOR Blackouts. Always gets drunk when he drinks. Wants to get high on whatever mood altering chemical available.

PERSONALITY CHANGE: Definitely.

PRIOR TREATMENT? Yes

WHERE? Methodist Boys Ranch – Gore Okla.

WHEN? March 1975

LONGEST DRY PERIOD 2 1/2 mos. at above ranch

AA INFORMATION: Been to 3 meetings

AL-ANON None

OPINION OF AA: Good

LEGAL PROBLEMS: Pending Public Drunk Charge.

OBSERVATIONS:

B-9

[LOGO] ST. JOHNS MEDICAL CENTER
[ILLEGIBLE] SOUTH UTICA AVE • TULSA, OKLAHOMA [STAMP]

An equal opportunity employer M/F handicapped

ALCOHOL TREATMENT PROGRAM

COUNSELOR'S DISCHARGE SUMMARY

PATIENT NAME Jeff Landrigan ~~Gil Ba~~ DATE 8/16/79
CASE NO. ___

COUNSELOR Gil Baker ADM. DATE 7/19/79 DISCH. DATE 8/17/79

Jeff basically came into program to get the Courts off his back however he has participated well in the activities in the program and has interacted well with the other patients.

He sees the possibility of alternate life styles and at this time seems to prefer sobriety.

The problem of living at home with an alcoholic mother bothers him but he does not have a better alternative until he is 18 yrs. old.

EXHIBIT A
A-1

JANE PHILLIPS EPISCOPAL –
MEMORIAL MEDICAL CENTER
HISTORY AND PHYSICAL EXAMINATION REPORT

Patient: Landrigan, Jeffrey

Hosp. No.:

Adm. Date: 2/6/77

Physician: Wayne J. Boyd, M.D.

CHIEF COMPLAINT: "I keep getting into trouble".

HPI: This 14 year old white male states that his problems started during the past summer. He began running around with one of his peers who talked him into breaking into a house. They were caught and the patient was placed on 9 months probation. He states that in December 1976 another friend asked him to run away with him which he did. He was gone for 23 hours and went to Arkansas with his friend where he was picked up by the police. and returned to his parents home in Bartlesville. He was seen by a juvenile officer with the District Court but nothing was done. Recently, at school, claims that one of the classmates gave him a tablet of Quaalude. He took it and states that it didn't agree well with him. He felt numb and had an undesirable reaction. He states that his father was extremely angry with him and tried to "beat me up". He states further that "I went nuts, threw things, broke windows and my father told me where the front door was if I wanted to leave and so I did". He left home and three days later his mother called the friend's home where he was staying. The friend's father talked to the patient,

encouraging him to talk with the parents who insisted that the patient come to the hospital.

The patient states that he has had difficulties in staying in school, that he doesn'tlike to sit through a class. He has been smoking pot excessively since the 9th grade, however he claims that his grades are satisfactory.

PAST HISTORY: The patient was born in Tulsa, Oklahoma, lived there 9 months and has lived in Bartlesville since that time. He denies any problems while in grade school and feels that his problems only started a few months ago. He enjoys bowling and to ride a motorcycle.

Past Illnesses: Tonsillectomy at age 5. No other history of major medical or surgical problems.

FAMILY HISTORY: The patient's mother is 52 years old. She works at Phillips Petroleum Company and the patient states she drinks excessively. The patient's father is 54 yeas old, in good health and works for Cities Service Oil Company in Tulsa. He commutes daily. Both parents have been married only one time and the patient states that the parents get along well. The patient has one sibling, a 24 year old sister with whom he feels he has a good relationship. Her profession is nursing.

PHYSICAL EXAMINATION: The patient is a well developed, well nourished 14 year old male. Body proportions are symmetrical.

EENT: Essentially negative.
NECK: Supple. Thyroid not palpable.
CHEST: Lung fields are clear.
HEART: Rhythm is regular. No murmurs.
ABDOMEN: Soft and flat.

A-2

JANE PHILLIPS EPISCOPAL –
MEMORIAL MEDICAL CENTER
PROGRESS NOTES AND DISCHARGE SUMMARY

NEURO: Tendon and superficial reflexes equal and active.

MENTAL STATUS: The patient is slightly disheveled in appearance. Is rather quiet. Somewhat withdrawn but is responsive to questions appropriately. He talks rather freely without excessive probing. He admits that he has been getting into trouble in school and with the police and with his family. He is oriented in all spheres. Shows impulsive behavior and intelligence is felt to be within average range.

IMPRESSION: Adjustment reaction of adolescence.

WJB/hgk

/s/ Wayne J. Boyd
Wayne J. Boyd, M.D.

D: 4/4/77
T: 4/5/77

A-3

JANE PHILLIPS EPISCOPAL –
MEMORIAL MEDICAL CENTER
PROGRESS NOTES AND DISCHARGE SUMMARY

Patient: Landrigan, Jeffrey

Hosp. No.:

Adm. Date: 2/6/77

Disc. Date: 2/10/77

Physician: Wayne J. Boyd, M.D.

The patient is a 14 year old white male admitted to thehospital on 2/6/77 after having conflicts on two or three occasions and having run away from home for a period of three days. The patient, on admission, was started on low doses of Mellaril. He was generally cooperative and seemed to accept being in the hospital. His custody was questionable as it was not sure whether he was in the custody of his parents or under the supervision of the court. The juvenile officer visited the patient while he was in the hospital and told him that it was probably going to be necessary that he be placed in an institution of some type. The patient seemed to be able to accept this, however later when the juvenile officer talked with the patient's mother she became somewhat hysterical and was rather angry and hostile toward the juvenile officer and tended to blame him for much of the child's difficulty. She insisted on taking the patient home from the hospital since she felt that he could obtain no help from the hospital and since he was going to be placed outside of the home, she wanted to have him home with her as much as possible. The patient was discharged rather prematurely at the insistence of the

mother on 2/10/77 to the custody of the mother and follow up through the courts.

Final Dx: Adjustment reaction of adolescence.

WJB/hgk

/s/ Wayne J. Boyd
Wayne J. Boyd, M.D.

D: 4/4/77
T: 4/5/77

SUPREME COURT OF ARIZONA

STATE OF ARIZONA, Appellee, -vs- JEFFREY TIMOTHY LANDRIGAN aka JEFFREY DALE PAGE, Appellant	Supreme Court No. CR-90-0323-AP Maricopa County No. CR-90-00066 OPINION

Appeal from the Superior Court of Maricopa County

The Honorable Cheryl K. Hendrix, Judge

AFFIRMED

Filed Feb. 25, 1993

Grant Woods, Attorney General — Phoenix

By Paul J. McMurdie, Chief Counsel, Criminal Appeals Section
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Crane McClennen, Assistant Attorney General

Attorneys for Appellee

Dean W. Trebesch, Maricopa County Public Defender — Phoenix

By Carol A. Carrigan, Deputy Public Defender
James L. Edgar, Deputy Public Defender

John W. Rood, III — Phoenix

Attorneys for Appellant

ZLAKET, J.

This is an automatic appeal from a death sentence following defendant's conviction of first degree murder. We have jurisdiction pursuant to Ariz. Const. art. 6, § 5(3) and A.R.S. §§ 13-4033 and -4035.

FACTUAL AND PROCEDURAL BACKGROUND

Evidence at trial established that the victim's body was found in his residence on December 15, 1989. According to the testimony of a friend ("Michael"), the victim had been a promiscuous homosexual who frequently tried to "pick up" men by flashing a wad of money. This would invariably occur after he got paid. The victim told Michael that he had recently met a person named "Jeff," with whom he wanted to have sex. The victim's physical description of Jeff was later found to closely approximate defendant.

Michael received three phone calls from the victim on Wednesday, December 13, 1989. During the first, the victim said he had picked up Jeff, that they were at the apartment drinking beer, and he wanted to know whether Michael was coming over to "party." Approximately 15 minutes later, the victim called a second time and said that he was in the middle of sexual intercourse with Jeff. Shortly thereafter, the victim called to ask whether Michael could get Jeff a job. Jeff spoke with Michael about employment, and asked if he was going to come over. Michael said no. During one of these conversations, the victim indicated that he had picked up his paycheck that day.

The victim failed to show up for work the following day, and calls to him went unanswered. On Friday, a co-worker and two others went to the victim's apartment and found him dead. He was fully clothed, face down on his bed, with a pool of blood at his head. An electrical cord hung around his neck. There were facial lacerations and puncture wounds on the body. A half-eaten sandwich and a small screwdriver lay beside it. Blood smears were found in the kitchen and bathroom. Partial bloody shoeprints were on the tile floor.

Cause of death was ligature strangulation. Medical testimony at the presentence hearing indicated that the victim probably was strangled after being rendered unconscious from blows to the head with a blunt instrument.

Acquaintances testified that the apartment usually was neat. When the body was found, however, the apartment was in disarray. Drawers and closets were open; clothes and newspapers were strewn on the floor. The remnants of a Christmas present lay open and empty at the foot of the bed. In the kitchen area were two plates, two forks, a bread wrapper, luncheon meat, cheese wrappers, and an open jar of spoiled mayonnaise. A five-pound bag of sugar was spilled on the floor. A clear impression of the sole of a sneaker appeared in the sugar. Neither the paycheck nor its proceeds were located. Although the apartment had been ransacked, nothing else seemed to be missing.

When defendant first was questioned, he denied knowing the victim or ever having been to his apartment. When arrested, however, he was wearing a shirt that belonged to the victim. Seven fingerprints taken from the scene matched defendant's. The impression in the sugar

matched his sneaker, down to a small cut on the sole. Tests also revealed that a small amount of blood had seeped into the sneaker. The blood matched that found on the shirt worn by the victim.

Defendant's ex-girlfriend testified that she had three telephone conversations with him in December of 1989. During one of those, defendant told her that he was "getting along" in Phoenix by "robbing." Defendant placed the last call to her from jail sometime around Christmas. He said that he had "killed a guy . . . with his hands" about a week before.

The jury found defendant guilty of theft, second degree burglary, and felony murder for having caused the victim's death "in the course of and in furtherance of" the burglary. The jury also determined that defendant previously had been convicted in Oklahoma of assault and battery with a deadly weapon, second degree murder, and possession of marijuana. At the time of the Arizona incident, defendant was an escapee from an Oklahoma prison.

At the sentencing hearing, the trial judge found two statutory aggravating circumstances under A.R.S. § 13-703(F): that defendant was previously convicted of a felony involving the use or threat of violence on another person; and, that defendant committed the offense in expectation of the receipt of anything of pecuniary value. In making the latter finding, the trial judge noted that the victim's apartment had been ransacked, and it appeared the culprit was looking for something.

The trial judge found no statutory mitigating circumstances sufficient to call for leniency. As for non-statutory mitigating circumstances, she identified family love and absence of premeditation. She stated, however, that the

mitigating factors did not outweigh the aggravating circumstances. Defendant was sentenced to an aggravated term of 20 years on the burglary count, to six months in the county jail for theft, and to death for murder.

MOTIONS FOR ACQUITTAL AND NEW TRIAL

Defendant argues that the trial judge erred in denying his motions for acquittal and for new trial under Rules 20 and 24, Ariz. R. Crim. P., 17 A.R.S. He claims that the evidence was insufficient to find him guilty of burglary and felony murder. We disagree.

A judgment of acquittal under Rule 20 is appropriate only where there is "no substantial evidence to warrant a conviction." *State v. Mathers,* 165 Ariz. 64, 67, 796 P.2d 866, 869 (1990). "Substantial evidence is more than a mere scintilla and is such proof that 'reasonable persons could accept as adequate and sufficient to support a conclusion of defendant's guilt beyond a reasonable doubt.'" *Id.* (quoting *State v. Jones,* 125 Ariz. 417, 419, 610 P.2d 51, 53 (1980)). Evidence may be direct or circumstantial, *State v. Blevins,* 128 Ariz. 64, 67, 623 P.2d 853, 856 (App. 1981), but if reasonable minds can differ on inferences to be drawn therefrom, the case must be submitted to the jury. *State v. Hickle,* 129 Ariz. 330, 331, 631 P.2d 112, 113 (1981). A trial judge has no discretion to enter a judgment of acquittal in such a situation.

Under Rule 24, a new trial is required only if the evidence was insufficient to support a finding beyond a reasonable doubt that the defendant committed the crime. *State v. Neal,* 143 Ariz. 93, 97, 692 P.2d 272, 276 (1984). Whether to grant or deny a new trial is, however, within the sound discretion of the trial court and will not be

disturbed on appeal absent an abuse of that discretion. *State v. Hickle,* 133 Ariz. 234, 238, 650 P.2d 1216, 1220 (1982).

A. Burglary

The evidence here, although circumstantial, is sufficient to uphold the burglary conviction. It supports the conclusion that defendant entered or remained in the apartment with the intent to commit a theft. A.R.S. § 13-1507(A). The fact that the victim was found on his bed fully clothed, next to a half-eaten sandwich, suggests he was killed before the apartment was ransacked. Any other conclusion would require an inference that the victim entered his apartment, found it trashed, then calmly made himself a sandwich and sat down on his bed to eat it. As the trial judge noted, the ransacked apartment indicates that the culprit was probably looking for things of value. The evidence clearly placed defendant, who admitted getting along by "robbing," and who was wearing one of the victim's shirts when arrested, in the ransacked apartment.

This case is not, as defendant argues, similar to *State v. Hill,* 12 Ariz. App. 196, 469 P.2d 88 (1970), in which the evidence showed only that the accused was present at the scene of a burglary. In *Hill,* unlike here, no evidence linked defendant to the crime itself. *Id.* at 197, 469 P.2d at 89.

Since reasonable minds could differ on the inferences to be drawn, the trial judge properly denied the Rule 20 motion. Additionally, because the verdict on the burglary count was not contrary to the weight of the evidence, the trial judge did not abuse her discretion in denying the Rule 24 motion.

B. Murder

On the charge of felony murder, it was for the jury to decide whether defendant committed or attempted to commit burglary in the second degree and, in the course of and in furtherance of that crime, caused the victim's death. A.R.S. § 13-1105(A)(2); *State v. Hallman,* 137 Ariz. 31, 38, 668 P.2d 874, 881 (1983). As noted above, the record contains substantial evidence to support the burglary conviction. Additionally, defendant admitted to his ex-girlfriend that he killed a man about a week before December 23rd, and the blood on his shoe matched that on the victim's shirt.

Defendant's reliance on *State v. Lopez,* 158 Ariz. 258, 762 P.2d 545 (1988), is misplaced. In *Lopez,* this court concluded that a felony murder conviction could not stand because the evidence did not support the elements of the underlying armed robbery (the coexistence of intent to commit robbery with the use of force). The evidence showed only that defendant and his brother took the victim's car and wallet to leave the scene and delay detection of the victim's identity. *Id.* at 264, 762 P.2d at 551.

The record here contains much more. The trial judge could not properly have granted defendant's motion for acquittal, nor did she abuse her discretion in denying the motion for new trial.

INSTRUCTION ON LESSER DEGREES OF HOMICIDE

Defendant next argues, citing *Beck v. Alabama,* 447 U.S. 625, 100 S. Ct. 2382, 65 L. Ed. 2d 392 (1980), that the trial judge's failure to *sua sponte* instruct the jury on lesser degrees of homicide – second degree murder or

manslaughter – deprived him of a fair trial by forcing the jury to convict him of first degree murder or "set . . . him free." Defendant failed to request any lesser homicide instruction at trial, but contends that the failure to instruct was fundamental error.

We find no error here, fundamental or otherwise. In *Beck,* the United States Supreme Court invalidated an Alabama statute prohibiting the judge in a capital case from instructing the jury on lesser included offenses, even though the evidence supported such instruction. The Court reasoned:

> [W]hen the evidence unquestionably establishes that the defendant is guilty of a serious, violent offense – but leaves some doubt with respect to an element that would justify conviction of a capital offense – the failure to give the jury the "third option" of convicting on a lesser included offense would seem inevitably to enhance the risk of an unwarranted conviction.

447 U.S. at 637, 100 S. Ct. at 2389, 65 L. Ed. 2d at 402-03. Thus, the fundamental concern in *Beck* was that a jury – convinced that the defendant had committed some violent crime, but unsure that he was guilty of a capital crime – might nonetheless vote for a capital conviction if the only alternative was to set the defendant free with no punishment at all. *Schad v. Arizona,* ___ U.S. ___, 111 S. Ct. 2491, 2504, 115 L. Ed. 2d 555, 574 (1991). In Arizona, however, there is no lesser included homicide offense to the crime of felony murder, because the necessary *mens rea* is supplied by the intent required for the underlying felony. *State v. Arias,* 131 Ariz. 441, 641 P.2d 1285 (1982); *Schad,* ___ U.S. at ___ n.5, 111 S. Ct. at 2512 n.5, 115 L. Ed. 2d at 584 n.5 (1991) (White, J., dissenting).

Defendant argues that the evidence warranted a manslaughter or second degree murder instruction. He claims to have placed a telephone call to his mother around December 12th or 13th in which he told her he was bleeding from his ears, nose, and rectum. He asserts the jury could have concluded from this evidence that he was injured during sex and killed the victim in response "upon a sudden quarrel or heat of passion."

Even if we construe his mother's highly equivocal testimony on this point in a light most favorable to defendant, the evidence is insufficient to support a finding that he killed the victim during a sudden quarrel or the heat of passion, or in response to injuries inflicted on him during sex. *Beck* does not require a trial court to instruct on a lesser offense that is unsupported by the evidence. Therefore, the failure to have done so in this case was not error. *See State v. LaGrand,* 153 Ariz. 21, 30, 734 P.2d 563, 572 (1987). *See also State v. Arias,* 131 Ariz. at 443-44, 641 P.2d at 1287-88 (1982) (*Beck* does not apply because Arizona law differs significantly from Alabama law).

EQUAL PROTECTION

Defendant's next argument, that the failure to have a jury decide the existence of aggravating circumstances violated his equal protection rights, also lacks merit. The Sixth Amendment does not require that a jury make findings of aggravating and mitigating circumstances before the death penalty is imposed. *Walton v. Arizona,* 497 U.S. 639, ___, 110 S. Ct 3047, 3054, 111 L. Ed. 2d 511, 524 (1990). Sentencing factors – as opposed to the elements of an offense – may be found by the court at the sentencing hearing. *State v. Hurley,* 154 Ariz. 124, 130,

741 P.2d 257, 263 (1987). We find no constitutional violation. *See Clark v. Ricketts,* 958 F.2d 851, 859 (9th Cir. 1992) (federal equal protection clause does not require that a jury find the aggravating circumstances supporting a death sentence).

EIGHTH AMENDMENT

Defendant argues that Arizona's death penalty scheme, taken as a whole, violates the Eighth Amendment by failing to "sufficiently channel the sentencer's discretion." We recently rejected this argument in *State v. Greenway,* 170 Ariz. 155, 164, 823 P.2d 22, 31 (1991) (Arizona's death penalty statute narrowly defines the class of death-eligible defendants). Likewise, defendant's suggestion that Arizona's aggravating circumstances are too broad to be meaningful is without substance.

AGGRAVATING AND MITIGATING CIRCUMSTANCES

We have independently reviewed the record to determine the presence or absence of aggravating and mitigating circumstances, and the propriety of the death penalty. *State v. Richmond,* 114 Ariz. 186, 196, 560 P.2d 41, 51 (1976). Defendant claims the record does not support a finding that the murder was committed with the expectation of the receipt of anything of pecuniary value, pursuant to A.R.S. § 13-703(F)(5).

We disagree. Not only is the actual receipt of money or valuables not required to find the expectation of pecuniary gain, *State v. LaGrand,* 153 Ariz. 21, 36, 734 P.2d 563, 578 (1987), but here defendant was convicted of theft and burglary on evidence we have deemed sufficient. Defendant

admitted he was getting money by robbing. The victim, who was pursuing defendant as a sexual partner, was an obvious target. The apartment was ransacked. The killing hardly appears to have been unexpected or accidental. *See State v. Nash,* 143 Ariz. 392, 405, 694 P.2d 222, 235 (unexpected or accidental death during course of or flight from robbery will not support aggravating circumstance of pecuniary gain) (1985). Physical and testimonial evidence supports the finding that pecuniary consideration was a cause, not merely a result, of the murder. *LaGrand,* 153 Ariz. at 35, 734 P.2d at 577 ("When the defendant comes to rob, the defendant expects pecuniary gain and this desire infects all other conduct of the defendant").

The record also supports the finding of a second aggravating circumstance, that defendant previously was convicted of a felony involving the use or threat of violence on another person under A.R.S. § 13-703(F)(2). *See* Okla. Stat. tit. 21, §§ 641, 642, 645 (1971) (assault and battery with a dangerous weapon). Defendant on appeal does not contest this finding. The state produced certified public records from Oklahoma, and its expert matched defendant's fingerprints with those on the records.

We also agree that the record does not present mitigating evidence sufficiently substantial to call for leniency. The trial judge properly rejected defendant's suggestion that intoxication was a mitigating circumstance under A.R.S. § 13-703(G)(1). The only evidence on this subject was testimony from the friend who said the victim called and told him that he and Jeff were drinking beer. There was no evidence that defendant was impaired, that he did not have the capacity to appreciate the wrongfulness of his conduct, or that he could not conform his conduct to the requirements of the law.

THE DEATH SENTENCE

Defendant argues that imposing the death sentence was unwarranted because the trial judge found the crime "not out of the ordinary when considering first degree murders." The judge determined, however, that while the crime was not out of the ordinary, defendant clearly was. She said:

> . . . Mr. Landrigan appears to be somewhat of an exceptional human being. It appears that Mr. Landrigan is a person who has no scruples and no regard for human life and human beings and the right to live and enjoy life to the best of their ability, whatever their chosen lifestyle might be. Mr. Landrigan appears to be an amoral person.

Defendant's comments in the courtroom support these conclusions. At the sentencing hearing, he offered the following soliloquy:

> Yeah. I'd like to point out a few things about how I feel about the way this [expletive], this whole scenario went down. I think that it's pretty [expletive]ing ridiculous to let a fagot (sic) be the one to determine my fate, about how they come across in his defense, about I was supposedly [expletive]ing this dude. This never happened. I think the whole thing stinks. I think if you want to give me the death penalty, just bring it right on. I'm ready for it.

Defendant made additional statements during the hearing. When his counsel attempted to characterize the prior second degree murder as self-defense, defendant interjected:

> THE DEFENDANT: See, also, Your Honor, there's a few things he got wrong here again. I'd like to clear them up.
>
> THE COURT: Please do, Mr. Landrigan.
>
> THE DEFENDANT: When we left the trailer, [the victim] went out of the trailer first. My wife was between us. I pulled my knife out, then I was the one who pushed her aside and jumped him and stabbed him. He didn't grab me. I stabbed him.

In attempting to explain the aggravated assault committed by defendant while in prison on this prior murder charge, defense counsel claimed that his client had been threatened by the person he assaulted, allegedly a friend of the murder victim's father. Defendant once more took issue with his lawyer:

> THE DEFENDANT: Yeah, something else that was just said about the guy that was in prison. That wasn't [the murder victim's] dad's friend or nothing like that. It was a guy I got in an argument with. I stabbed him 14 times. It was lucky he lived. But two weeks later they found him hung in his cell. He was dead. It wasn't nothing like it was presented.

The best we can say for this defendant is that he was forthright. His comments demonstrate a lack of remorse that unfavorably distinguishes him from other defendants and supports imposition of this severe penalty. *See State v. Fierro,* 166 Ariz. 539, 548, 804 P.2d 72, 81 (1990) ("We will not uphold imposition of the death penalty unless either the murder or the defendant differs from the norm of first degree murders or defendants").

ASSISTANCE OF COUNSEL

Finally, defendant argues that his trial counsel deprived him of effective assistance by instructing the probation officer not to interview defendant in preparation for the aggravation/mitigation hearing. On direct appeal, we will not reverse a conviction on ineffective assistance grounds absent an evidentiary hearing below. *State v. Carver,* 160 Ariz. 167, 175, 771 P.2d 1382, 1390 (1989). Here, no hearing occurred because defendant moved to dismiss his petition for post-conviction relief. The trial judge granted that motion. We address the issue now only because "we may clearly determine from the record that the ineffective assistance claim is meritless." *Id.*

To establish ineffective assistance of counsel, defendant must prove that (1) counsel lacked minimal competence as determined by prevailing professional norms, and (2) counsel's deficient performance prejudiced the defense. *Carver,* 160 Ariz. at 174, 771 P.2d at 1389. Whether counsel's actions are reasonable may be determined or substantially influenced by the defendant's own statements or actions. *Strickland v. Washington,* 466 U.S. 668, 691, 104 S. Ct. 2052, 2066, 80 L. Ed. 2d 674, 695 (1984).

At the sentencing hearing, defendant instructed his lawyer not to present any mitigating evidence. He prohibited his ex-wife and mother from testifying in his behalf, and they honored his wishes. Over defendant's objections, his attorney stated on the record what he thought those witnesses would say, specifically that defendant had a past history of substance abuse, that his mother had abused drugs when pregnant with him, that he was supporting a family, and that his prior murder conviction involved elements of self-defense. As previously indicated,

defendant interjected with a more inculpatory version of that prior killing.

Counsel's instruction to the probation officer was clearly within the wide range of professionally competent assistance, given defendant's stated desire not to have mitigating evidence presented in his behalf, and his tendency to volunteer damaging statements like those made to the trial judge at the hearing. Contrary to defendant's argument, this case is not like *State v. Smith,* 136 Ariz. 273, 665 P.2d 995 (1983). The defendant in *Smith* would have testified in mitigation that he did not intentionally shoot the victim, but for erroneous legal advice from his counsel as to the admissibility of such statements in any subsequent legal proceeding. We held that "advising a client incorrectly about the black letter Rules of Criminal Procedure, especially in a matter of life and death," was not "minimally competent representation." *Id.* at 279, 665 P.2d at 1001.

This case does not present such a situation. In his comments, defendant not only failed to show remorse or offer mitigating evidence, but he flaunted his menacing behavior. On this record it is reasonable to assume that had defendant been interviewed, it would not have been to his benefit. There is no showing of incompetence or prejudice.

In view of the majority holding in *State v. Salazar,* 128 Ariz. Adv. Rep. 10, 19-20 (1992), we have not conducted a proportionality review. We have, however, reviewed the record for fundamental error pursuant to A.R.S. § 13-4035, and found none. Defendant's convictions and sentences are affirmed.

THOMAS A. ZLAKET,
Justice

STANLEY G. FELDMAN, Chief Justice

JAMES MOELLER, Vice Chief Justice

ROBERT J. CORCORAN, Justice

FREDERICK J. MARTONE, Justice

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ATTORNEY FOR PETITIONER

IN THE SUPERIOR COURT OF MARICOPA COUNTY, ARIZONA

STATE OF ARIZONA Respondent, v. JEFFREY TIMOTHY LANDRIGAN, Petitioner.	No. CR 90-00066 **MOTION FOR APPOINTMENT OF EXPERT** Judge Cheryl K. Hendrix

(Filed May 5, 1994)

Petitioner, through counsel undersigned, requests that an order issue appointing a medical expert to assist in Petitioner's claim for relief for the reasons indicated in the following memorandum.

RESPECTFULLY SUBMITTED this 5th of May, 1994.

By /s/ Jan J. Raven
JAN J. RAVEN
Attorney

MEMORANDUM

One of the claims for Post Conviction relief rased by Petitioner is that his attorney was ineffective for failing to present expert testimony concerning the adverse effects of

maternal ingestion of drugs and alcohol during pregnancy on a developing fetus. Counsel for Petitioner avows to the Court that she will present lay witness evidence to substantiate that Petitioner's biological mother consumed such adverse chemicals during her pregnancy with him. Counsel further avows that that evidence is from sources not explored or presented by defense counsel at the presentencing hearing.

Counsel will need the assistance of an expert to establish that substantial mitigating evidence in this regard was not sufficiently presented to the trial court. This is particularly true as trial counsel did not arrange to have a medical expert present at the hearing. (See Exhibit 1, attached from sentencing transcript). Counsel undersigned is contract counsel. Accordingly, counsel was first required to present this request to the Office of Alternative Indigent Representation. This request was denied by that office. Therefore, this motion is now presented to the trial court.

RESPECTFULLY SUBMITTED this 5th of May, 1994.

By /s/ Jan J. Raven
JAN J. RAVEN
Attorney

Copy of the foregoing motion
mailed/delivered this 5th day
of May, 1994, to:

THE HONORABLE CHERYL HENDRIX
Judge of the Superior Court

GERALD GRANT
Deputy County Attorney

By /s/ Jan J. Raven
JAN J. RAVEN
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ATTORNEYS FOR RESPONDENT

ARIZONA SUPERIOR COURT
COUNTY OF MARICOPA

STATE OF ARIZONA, RESPONDENT, -vs- JEFFREY TIMOTHY LANDRIGAN, PETITIONER.	CR-90-00066 RESPONSE TO MOTION FOR APPOINTMENT OF EXPERT (THE HON. CHERYL K. HENDRIX)

(Filed May 13, 1994)

Respondent, State of Arizona, opposes Petitioner's motion for appointment of expert and respectfully requests that the motion be denied.

DATED this 13th day of May, 1994.

Respectfully submitted,

GRANT WOODS
ATTORNEY GENERAL

/s/ Joseph T. Maziarz
JOSEPH T. MAZIARZ
ASSISTANT ATTORNEY GENERAL

ATTORNEYS FOR RESPONDENT

MEMORANDUM OF POINTS AND AUTHORITIES

Petitioner asks this Court to issue an order appointing a "medical expert" (at court expense) so that current counsel can explore the alleged "adverse effects of maternal ingestion of drugs and alcohol during pregnancy on a developing fetus,"[1] and whether trial counsel was ineffective in not offering such evidence in mitigation at sentencing.

This Court should deny the motion because Petitioner *personally* waived his right to present mitigation *and* instructed his mother not to testify in mitigation. Additionally, all claims of ineffective assistance of trial counsel are precluded.

At the sentencing hearing, Petitioner's trial counsel informed the Court that Petitioner had instructed the witnesses counsel intended to call in mitigation, Sandy Landrigan (Petitioner's ex-wife) and Virginia Gipson (Petitioner's natural mother), *not* to testify at the hearing. (R.T. of Oct. 25, 1990, at 2-4.) Counsel stated that he had "strongly" advised Petitioner that it was "very much against his interests to take that particular position." *(Id.* at 4.) The Court then personally addressed Petitioner as follows:

THE COURT: Mr. Landrigan, have you instructed your lawyer that you do not wish for him to bring *any mitigating circumstances* to my attention?

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[1] This is apparently a variation of the currently in vogue claim of "fetal alcohol syndrome." *See Harris v. Vasquez*, 949 F.2d 1497, 1506-07 (9th Cir. 1991), *cert. denied*, 112 S. Ct. 1275 (1992); *Francis v. Dugger*, 908 F.2d 696, 702 (11th Cir. 1990).

THE DEFENDANT: Yeah.

THE COURT: Do you know what that means?

THE DEFENDANT: Yeah.

THE COURT: Mr. Landrigan, are there mitigating circumstances I should be aware of?

THE DEFENDANT: Not as far as I'm concerned.

(Id. at 4, emphasis added.) The Court then addressed the witnesses Petitioner's counsel wished to call in mitigation:

THE COURT: Ms. Landrigan, will you testify today?

MS. LANDRIGAN: No, ma'am.

THE COURT: Why not?

MS. LANDRIGAN: I just wish not to.

THE COURT: Are you doing so at the instruction of Mr. Landrigan?

MS. LANDRIGAN: Yes, my ex-husband.

THE COURT: Has he asked you not to testify because you feel – or he feels that it's in his best interests?

MS. LANDRIGAN: No. I figure it's his life going on here. If he wants me not to, I don't want to.

. . . .

THE COURT: I understand, Ms. Gipson is here. Ms. Gipson, would you like to come testify?

MS. GIPSON: No.

THE COURT: Is there anything you wish to say about your son?

MS. GIPSON: No.

(Id. at 5, 13.)

Nevertheless, the Court instructed counsel to relate what he expected the witnesses would say, had Petitioner not gagged them. To his credit, Petitioner interjected on a couple occasions, pointing out that counsel was sugar-coating Petitioner's past. (R.T. of Oct. 25, 1990, at 7-8, 11-12.)

In its opinion, the Arizona Supreme Court noted that Petitioner had instructed his attorney not to present *any* mitigating evidence:

> At the sentencing hearing, defendant instructed his lawyer not to present any mitigating evidence. He prohibited his ex-wife and mother from testifying in his behalf, and they honored his wishes.

State v. Landrigan, 176 Ariz. 1, 8, 859 P.2d 111, 118 (1993).

The law is clear – a capital defendant may waive the presentation of mitigating evidence. *Blystone v. Pennsylvania,* 494 U.S. 299, 306 n.4, 110 S. Ct. 1078, 108 L. Ed. 2d 255 (1990); *Singleton v. Lockhart,* 962 F.2d 1315, 1321, (8th Cir. 1992); *State v. Tyler,* 553 N.E. 2d 576, 583-85 (Ohio 1990) (trial court is obligated to honor a defendant's choice not to have mitigation presented); *State v. Bloom,* 774 P.2d 698, 718-19 (Cal. 1989) (same). Petitioner personally and expressly waived his right to present mitigation; he is forever bound by that decision.

A second reason exists to deny Petitioner's motion for appointment of an expert. On direct appeal, Petitioner elected to raise the issue of ineffective assistance of counsel. *Landrigan,* 176 Ariz. at 8, 859 P.2d at 118. The supreme court addressed and rejected the issue on the merits. *Id.* Petitioner is now precluded from raising any additional claims of ineffective assistance of counsel because he failed to do so on appeal. *See* Rule 32.2(a)(2) and (3), Ariz. R. Crim. P.; *State v. Tison,* 142 Ariz. 454, 457, 690 P.2d 755, 758 (1984), *vacated on other grounds,* 481 U.S. 137 (1987); *State v. Scrivner,* 132 Ariz. 52, 54, 643 P.2d 1022, 1024 (Ct. App. 1982). Since all claims of ineffective assistance of counsel will be precluded, it is simply a waste of time and scarce resources to pay a medical expert to explore a claim that Petitioner has personally waived and is precluded.

Petitioner's motion for appointment of a medical expert should be denied.

RESPECTFULLY SUBMITTED this 13th day of May, 1994.

GRANT WOODS
ATTORNEY GENERAL

/s/ Joseph T. Maziarz
JOSEPH T. MAZIARZ
ASSISTANT ATTORNEY GENERAL
CRIMINAL APPEALS SECTION

ATTORNEYS FOR RESPONDENT

COPIES of the foregoing were deposited
for mailing this 13th day of May, 1994, to:

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/s/ Leslie M. Madsen
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IN THE SUPERIOR COURT OF MARICOPA COUNTY, ARIZONA

STATE OF ARIZONA Respondent, v. JEFFREY TIMOTHY LANDRIGAN, Petitioner.	No. CR 90-00066 **PETITION FOR POST-CONVICTION RELIEF** Hon. Cheryl K. Hendrix

NOW COMES Petitioner, through counsel undersigned, and submits his Petition for Post-Conviction Relief based upon the attached Memorandum, Affidavits, and Exhibits.

RESPECTFULLY SUBMITTED this 31st day of January, 1995.

By /s/ Jan J. Raven
JAN J. RAVEN
Attorney for Petitioner

MEMORANDUM

I. Facts and Procedure:

Petitioner, Mr. Jeffrey T. Landrigan, was charged with first degree felony murder, with burglary in the second degree, and with

* * *

danger of erroneous conviction. *Grigsby v. Mabry,* 569 F.Supp. 1273, 1283 (E.D. Ark. 1983), *modified,* 758 F.2d 226 (8th Cir. 1985). *See also, Lockhart v. McCree,* 476 U.S. 162, 173, (1986). Nonetheless, in *Lockhart,* the Supreme Court accepted that death-qualification serves a legitimate state's interest where a jury decides both the guilt and penalty to be imposed. *See, also, Buchanan v. Kentucky,* 483 U.S. 402 (1987).

In Arizona, however, the jury does not determine the appropriate sentence in a capital case. A.R.S. §13-703(B). Accordingly death qualification serves no legitimate state interest in Arizona.[2] It was, therefore, an improper infringement on Mr. Landrigan's state and federal constitutional rights to be tried by a fair and impartial jury.

B. Newly Discovered Evidence.

The State charged Mr. Landrigan with felony murder based upon the predicate felony of burglary. The State's position was that Mr. Landrigan had stolen money from the victim in the form of the proceeds from a paycheck he had cashed. The State presented testimony from the victim's co-workers that the victim had a habit of using his paycheck to attract strangers for homosexual, one night

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[2] Although the Arizona Supreme Court has sustained death qualification, those cases do not squarely address this issue. *See, State v. Sparks,* 147 Ariz. 51, 708 P.2d 732 (1985); *State v. Thomas,* 133 Ariz. 533, 652 P.2d 1380 (1982). Moreover, in *State v. Martinez-Villareal,* 145 Ariz. 441, 702 P.2d 670, *cert. denied,* 474 U.S. 975 (1985), the Court found this proper to determine whether juror's views prevented the performance of their duties, yet identified no legitimate state interest for death-qualification.

stands. They explained that the victim was usually intoxicated and that he would wave his money around after cashing his paycheck in the hope of attracting a new partner for the night. His co-workers testified that he had picked up his paycheck, of approximately $250, just before he was killed. (6/19/90, 34-35, 37-38, 55-58, 64; 6/25/90, 46) Mr. Timothy Fincher, the assistant manager where the victim had worked, testified for the State that the victim had cashed his paycheck on December 13, 1989:

> "Q. Now in your capacity as an assistant manager have you had access to and looked at banking records for the Flex Complex?
>
> "A. I haven't looked at the records. I did contact Florida and found out that Mr. Dyer's check had been cashed.
>
> "Q. When was it cashed?
>
> "A. Uh, it was cashed the same day it was issued to him.
>
> "Q. So December 13th?
>
> "A. Right." (6/25/90, 46)

The State also presented testimony from Phoenix Police Detective Michael Chambers that neither the check nor any money were found in the victim's apartment. (6/21/90, 3) From these facts, the focus of the county attorney's argument became that Mr. Landrigan had committed this crime so that he could take the victim's money. The State's primary theory was that the victim had cashed the check, used it to attract Mr. Landrigan, and then that Mr. Landrigan had stolen that money from him. The State's attorney argued that again and again in its closing arguments:

". . . We have a paycheck. The day he died, Mr. Dyer was paid. Tim Fincher told us that the check was about two hundred fifty bucks, give or take a dollar or two. That wasn't at the scene. There was no money at that apartment either. Where did that money go. . .(6/27/90, 9)

* * *

". . . Now, what else did those people tell you? Mr. Dyer likes to pick up strangers off the street, a fact of life. They also told us that Mr. Dyer had picked up his paycheck on the 13th. Remember that? About two hundred and fifty dollar paycheck.

". . . The other witnesses, Michael Shaw, James Tichy, other co-workers of the victims. Michael Shaw, probably his best friend. He told us also, yes, Mr. Dyer is a homosexual. He likes to pick up men. But what's more important about their testimony is that he picked up his paycheck on December 13th. He liked to drink, flash his money around and find a stranger or a new sexual partner to go out with. (6/27/90, 13-14)

* * *

". . . Can you imagine what a fortune two hundred and fifty dollars must be to a man who is having twenty-five dollars wired to him by his girlfriend? That's a lot of money when you are in those circumstances. A man who needs temporary jobs to make ends meet, to survive? A lot of money. (6/27/90, 14-15)

* * *

". . . And what did he get? A paycheck or the remains of the paycheck and a shirt, a Harley-Davidson T-shirt." (6/27/90, 18)

The State's attorney hit that theme hard again in his rebuttal closing arguments:

> ". . . Now, I'll go back through defense counsel's arguments for you. He made reference to the fact that Jeffrey Landrigan had no cash on him at the time of the contact by Detective Chambers. That's on December 23rd, 1989. The money or the check, whichever it might have been, was stolen on December 13th, 1989. That's ten days. If you have been living as a transient without money, how fast do you think you could go through two hundred and fifty bucks? You could sure do it in ten days, easily. There is no problem[ ] with that." (6/27/90, 39)

It turns out, however, that the paycheck of Mr. Dyer was never cashed. This fact was subsequently verified through Petitioner's investigator by contacting the payroll manager of Fleck and Associates, the victim's former employer. (Exhibits 1 and 2 attached)

Rule 32.1(e), Arizona Rules of Criminal Procedure, entitles a Petitioner to relief if he establishes that there is newly discovered evidence which, if introduced, might have affected the verdict, finding, or sentence. *E.g., State v. Bilke,* 162 Ariz. 28, 51, 52, 781 P.2d 28, 29 (1989). The five requirements for a colorable claim of newly discovered evidence are discussed in turn:

i. <u>The evidence must appear on its face to have existed at the time of trial but be discovered after trial.</u>

Exhibit 2 establishes that the evidence that the victim's check had not been cashed existed at the time of trial. The arguments of the county attorney and of defense

counsel (6/27/90, 21, 30), together with the affidavit of Petitioner's investigator (Exhibit 1) shows that the evidence was not discovered until after trial.

ii. The motion must allege facts from which the court could conclude the defendant was diligent in discovering the facts and bringing them to the court's attention.

The investigator appointed to assist with Petitioner's Post Conviction Relief Petition discovered the evidence that the victim's paycheck had not been cashed. (Exhibit 1 attached) Prior to trial, defense counsel received discovery on an ongoing basis from the prosecutor. (P. I., 10, 18-18b) In addition trial counsel filed a notice of defenses which included a request to be advised of any rebuttal witnesses. (P. I., 21-21d) During the pendency of the appeal there would have been no reason to investigate this question because matters outside the record cannot be argued on appeal. Rule 31, Arizona Rules of Criminal Procedure.

iii. The evidence must not be simply cumulative or impeaching.

As previously stated, the evidence presented at trial was that the victim had picked up and cashed his paycheck. (6/25/90, 46) No evidence was presented to the contrary. The evidence, therefore, was not cumulative. It was, moreover, more than merely impeaching evidence. Mr. Landrigan was charged with felony murder based upon the underlying felony of burglary. The primary argument by the State in this regard was that Mr. Landrigan had stolen the victim's money. Had this evidence establishing that the check had not been cashed, been

available at the time of trial, that primary argument would have been completely eliminated.

iv. The evidence must be relevant to the case.

It is clearly relevant to Mr. Landrigan's case to establish that victim did not have over $250 in cash when he was killed. Eliminating that well-recognized motive for burglary (and often murder) would have left the State with a much weaker argument that there was a burglary and with a much weaker argument that the crime was committed for pecuniary gain.

v. The evidence must be such that it would likely have altered the verdict, finding, or sentence if known at the time of trial.

Petitioner contends that the fact that the victim's check was uncashed is a crucial piece of evidence for two primary reasons.

First, it would have entirely removed the argument from the State that the victim, as was his habit, had been drinking and flashing cash in an effort to lure a sexual partner for the night. The implication that Petitioner had seen that flashing of money and responded with the intent to steal the money would have been completely removed from jury consideration. That would have made it less likely that the jury would have convicted Petitioner in the first place.

Second, even assuming conviction, without this implication provided strong underpinnings for a finding of "pecuniary gain" as a motive for murder, this Honorable Court would have been less likely to find the existence of

that aggravating factor. Without that additional aggravating factor, (1/25/90, 25), and with this Honorable Court finding some mitigation evidence (1/25/90, 30-32) the sentence of death may well not have been imposed.[3]

There is a reasonable likelihood that this evidence, if presented at trial or at sentencing, could have affected the outcome of either of those proceedings. *See*, Rule 32.1(e), Arizona Rules of Criminal Procedure; *State v. Cooper,* 166 Ariz. 126, 129, 899 P.2d 992, 995 (App. 1990). Accordingly, Petitioner is entitled to a new trial or, in the alternative, to resentencing.

C. Ineffective Assistance of Counsel at Sentencing.

Petitioner contends that he was denied effective representation of counsel during the sentencing phase of the trial. Under both the United States and Arizona Constitutions, "[t]he right to effective assistance of counsel is a fundamental right." *State v. Lee,* 142 Ariz. 210, 216; 689 P.2d 153, 159 (1984). *Accord, Strickland v. Washington,* 466 U.S. 668 (1984). The standard for determining whether counsel was ineffective at sentencing is the same as the standard for determining effectiveness at any other stage of the proceedings. *E.g., Evans v. Lewis* 855 F.2d 631, 636 (9th Cir. 1988). Counsel has a duty to undertake reasonable investigations or to make a reasonable decision

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[3] Petitioner contends that the likelihood of a different result at sentencing would have been virtually certain with this evidence, had additional mitigation been argued to the court as is subsequently addressed in this Petition.

that particular investigation is unnecessary. *Strickland v. Washington,* 466 U.S. at 691.

A claim of ineffective assistance of trial counsel requires proof that counsel's performance was deficient and that the defendant was prejudiced by that deficient performance. To establish deficient performance it must be shown that counsel's performance fell below an objective standard of reasonably effective assistance under the prevailing professional norms. To demonstrate prejudice it must be shown that but for trial counsel's deficient performance there is a reasonable probability that the result would have been different. *Strickland v. Washington, supra; State v. Nash,* 143 Ariz. 392, 694 P.2d 222 (1985); *State v.* in the outcome." *Strickland v. Washington,* 466 U.S. at 693-694. Prejudice analysis does not depend on whether the outcome of the proceeding would have been different. *Lockart v. Fretwell,* 133 S.Ct. 838 (1993). Analysis of the prejudice prong is directed to determining whether the proceeding was fundamentally unfair. *Id.* at 842. *See, United States v. Cronic,* 466 U.S. 648 (1984).

The decision whether to impose a sentence of death requires that the trial court weigh aggravating and mitigating circumstances. The State is required to prove any aggravating circumstances in A.R.S. §13-703(F) beyond a reasonable doubt. A.R.S. §13-703(C). *State v. Michael Apelt,* 176 Ariz. 349, 367, 861 P.2d 634, 652 (1993), *cert. denied,* ___ U.S. ___, 115 S. Ct. 113 (1994). The defendant must prove any mitigating circumstances by a preponderance of the evidence. *Id.* at 367. If the trial court finds aggravating circumstances but no mitigating circumstances sufficient to call for leniency, the trial court must sentence the defendant to death. A.R.S. §13-703(E).

This Court found as aggravating factors that Mr. Landrigan had a prior violent felony conviction and that this murder was committed in the expectation of pecuniary gain. (10/25/90, 24-25) This Court found as non-statutory mitigating circumstances that there was evidence of familial love and concern, that Mr. Landrigan's conduct was good while in jail and while in court, and that no evidence of premeditation had been presented in this case. (10/25/90, 30-32) This Court determined that the non-statutory mitigation found was insufficient to call for leniency.

Petitioner contends that there were two ways in which trial counsel was ineffective at sentencing. First, counsel made arrangements to present mitigation evidence from Mr. Landrigan's biological mother and former wife. Mr. Landrigan's mother was to testify concerning her use of drugs and alcohol during her pregnancy with Mr. Landrigan. Ms. Landrigan was to present testimony that Petitioner's prior conviction for second degree murder, had resulted from an altercation which was more in the nature of an act of self-defense to mitigate the impact of that conviction. At Mr. Landrigan's request those witnesses did not testify. (10/25/90, 2-11)

There were, however, alternative sources of that information which were not explored by counsel. Mr. Landrigan's biological father, Mr. Darrel Hill was an available source of that information. He was not contacted by counsel. (Exhibit 3 attached) Moreover, Mr. Landrigan's adopted sister, a registered nurse, was not contacted by counsel and she has had experience with Petitioner and as a professional with fetal alcohol syndrome. She was available and willing to testify on Petitioner's behalf in that regard. (Exhibit 5 attached) As to the fact that there was evidence that Mr. Landrigan may have acted in self

defense in the earlier case, there was the reported decision of the Court reversing his earlier conviction that counsel could have presented to the court. *Landrigan v. State*, 700 P.2d 218 (Okla. 1985) (Exhibit 6 attached)

In addition to failing to investigate these alternative sources of the mitigating evidence that trial counsel was prepared to present, he also was ineffective in a second way. That is that he failed to explore additional grounds for arguing mitigation evidence.

Petitioner's sister, Shannon Sumpter, would also have verified that their mother, Mrs. Landrigan, was an alcoholic and that that disease caused significant problems within the family which impacted adversely on Petitioner as he was growing up. Ms. Sumpter would have provided that information to the Court had she been contacted by counsel. She would, moreover, have provided additional information concerning familial problems which preceded the time of sentencing and which may have offered at least a partial explanation of Petitioner's conduct at sentencing. (Exhibit 5 attached)

There was a second source of uninvestigated mitigation evidence regarding Petitioner that is most significant. Petitioner's biological family demonstrates a long history of violent behavior. That history includes Petitioner's biological father, Mr. Darrel Wayne Hill, who was, at the time of Petitioner's trial and sentencing on death row in the state of Arkansas.[4] (Exhibit 3 and 7 attached)

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[4] Mr. Hill is presently being retried for that offense after reversal of his conviction. *See, Hill v. Lockhart*, 824 F.Supp. 1327 (E.D.Ark. 1993).

Research has long been conducted which recognizes that the propensity to commit violent acts may well have a biological component. When a biological component is added to the fact that Petitioner was raised in the dysfunctional home of an alcoholic and that he was very likely damaged by the prenatal alcohol and drug use of his biological mother, the propensity for violence becomes almost a certainty. Dr. Frank A. Elliott summarized this theory:

> "Although environmental factors contribute to violence, they are seldom its sole cause because behavior is a biosocial affair, the result of interactions between the brain, environmental situations, and endogenous drives. Thus, the nature of the brain's response to a stimulus depends on the confluence of both biological and environmental variables at ta particular moment. An unfavorable environment often operates selectively to produce antisocial behavior in certain individuals who are especially vulnerable by reason of inherited or acquired neurophysiological traits. Exclusively sociological theories fail to explain why hard-core criminal violenee runs like a scarlet thread through the fabric of all societies, *in good times and in bad, and affects all classes.* Nor do they explain why even in times of anomie, when violence spreads, it still involves only a relatively small portion of the population or why it is that many individuals who are exposed to criminogenic influences in early life do not become violent as adults, or why a significant number of people who have not been exposed to such influences do become pathologically aggressive." Elliott, Frank A. (1988), Violence: A product of biosocial interactions, 16 *The Bulletin of the American Academy of Psychiatry and The Law,* 133.

While the literature is not, and cannot be conclusive, there are many reputable authorities which have recognized and studied the biological component of violent behavior. *See, e.g.,* Volavka Jan, M.D., Martell, Dan, and Convit, Antonio, M.D., (1992) Psychobiology of the Violent Offender, 37 *Journal of Forensic Sciences,* 237-251 (Exhibit 8 attached [reference pages omitted]); Mednick, Sarnoff, Kandel, Elizabeth (1988) Congenital Determinants of Violence, 16 *The Bulletin of American Academy of Psychiatry & Law,* 101-109. (Exhibit 9 attached).

Petitioner is a virtually classic example of the case studies supporting the opinion that violent behavior has a biological component. He was adopted as a baby and did not know his biological history until he himself was incarcerated following his conviction in the state of Oklahoma. (Exhibits 3 and 5 Attached) Studies on individuals like Petitioner are the backbone of research into the biology of violence. As stated by Professor Lee Ellis regarding conclusions reached through such "persuasive" adoption studies, ". . . [E]vidence of genetic involvement in criminality is now approaching the limits of certainty."[5]

A sentence of death must be tailored to personal responsibility and moral guilt. *South Carolina v. Gathers,* 490 U.S. 805 (1989); *Emmund v. Florida,* 458 U.S. 782, 801 (1982). Where a defendant's crime is attributable to a disadvantaged background or emotional or mental problems the defendant is less culpable than one without the excuse. *California v. Brown,* 479 U.S. 538, 545 (1987) (O'Connor, J., concurring). *See, also, State v. Wallace,* 160

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[5] Marsh, Frank H. and Katz, Janet, (1985), *Biology Crime & Ethics,* Chapter 2, p. 81.

Ariz. 424, 427, 773 P.2d 983, 986 (1989), *cert. denied,* 494 U.S. 1047 (1990). Due to ineffective assistance from trial counsel at sentencing, this Honorable Court did not have a complete and accurate picture of Petitioner's background. Accordingly, his sentence was not properly tailored to his personal responsibility and moral guilt. This Honorable Court should grant an evidentiary hearing so that Petitioner may have the opportunity of establishing his entitlement to relief on this basis. *State v. Sutton* 143 Ariz. 234 (App. 1984); *State v. Suarez,* 23 Ariz.App.,530 P.2d 402 (1975).

D. Court's Consideration of Presentence Report containing Family Recommendation of Death Sentence.

At the hearing pursuant to Rule 703, Arizona Rules of criminal Procedure, a presentence report was considered by the Court over the objection of trial counsel. (P.I., 68) The presentence report prepared in this case contained a statement from the victim's brother which unequivocally stated that it was his opinion that a sentence of death was appropriate for Mr. Landrigan:

> "Mr. Charles Dyer, the victim's brother, advised this [probation] officer that he felt the defendant deserved the death penalty. He further related that the man killed someone and it does not matter whose brother was the victim. . ." (P.I., p. 75c)

Such statements are "irrelevant to a capital sentencing decision, and [their] admission creates a constitutionally unacceptable risk" of an arbitrary sentence in violation of Appellant's Eighth Amendment rights. *Booth v.*

Maryland, 482 U.S. 496, 503 (1987). *See also, Payne v. Tennessee,* ___ U.S. ___, 111 S.Ct. 2597, 2911 n.2 (1991).

The fact that a judge imposes the death sentence in Arizona does not render the rule in *Payne* and *Booth* inapplicable. The Arizona Supreme Court has held that a *Booth* violation occurs if a

* * *

III. Conclusion:

Petitioner respectfully requests that this Honorable Court set this matter for an evidentiary hearing pursuant to Rule 32.8, Arizona Rules of Criminal Procedure. Petitioner further contends that his conviction for felony murder should be reversed or, in the alternative, that Petitioner should be resentenced to life in prison for the first degree murder conviction.

RESPECTFULLY SUBMITTED this 31st day of January, 1995.

By /s/ Jan J. Raven
JAN J. RAVEN
Attorney for Petitioner

VERIFICATION

I swear or affirm that this Petition includes all the claims and grounds for post-conviction relief that are known to me, that I understand that no further petitions concerning this conviction may be filed on any ground of which I am aware but do not raise at this time, and that

the information contained in this form and in any attachments is true to the best of my knowledge or belief.

By: /s/ Jeffrey T. Landrigan
JEFFREY TIMOTHY
LANDRIGAN

Subscribed and sworn to before me on Jan. 24, 1995.
(date)

[Illegible]
Notary Public

19 June 1997
My Commission Expires

EXHIBIT 1

AFFIDAVIT

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

NORA L. SHAW,. having first been duly sworn upon her oath, does hereby depose and say:

1. That my name is Nora L. Shaw. I am a licensed private investigator with the State of Arizona with license number 8804024.

2. That on February 10, 1994 I was appointed by the Alternative Indigent Representation Project to assist attorney, Jan Raven, with an appeal investigation involving Defendant Jeffrey Timothy Landrigan, CR 90-00066.

3. That as part of my investigation, I was requested to ascertain if the paycheck belonging to the victim, Mr. Dyer, was indeed cashed.

4. That I contacted State's witness, Tim Fincher, by telephone in Elgin, Oregon. Mr. Fincher stated that he had testified at the trial of Mr. Landrigan, and that he knew that the paycheck belonging to Mr. Dyer had not been cashed by Mr. Dyer.

5. That I contacted Charlie Hitchings, manager of Fleck & Associates, the former employer of Mr. Dyer. Mr. Hitchings indicated that he had testified at Mr. Landrigan's trial and knew that Mr. Dyer had been paid on a Wednesday in the amount of approximately $300, and that Mr. Dyer had picked up his check that same afternoon.

6. That I contacted Barbara Stewart, Payroll Manager of Fleck & Associates, regarding the paycheck of Mr. Dyer. Ms. Stewart researched her records that showed that Chester Dyer's paycheck dated December 14, 1989, was never cashed. She waited until December 30, 1990 to void the check "due to the unusual circumstances."

7. That I spoke to Public Defender Investigator, George Labash, regarding his investigation on this matter. Mr. Labash had no independent recollection about the circumstances of the paycheck, or any evidence that there was knowledge prior to trial that the check was never cashed.

8. That I spoke to Mr. Labash and also, his supervisor, William Woodriffe, about locating Mr. Labash's file to refresh his memory. Neither of them, nor Donald Vert in Records, could locate the file.

9. That I spoke with Mr. Landrigan's former defense counsel, Dennis Farrell, who indicated that he never had any information that the paycheck of Mr. Dyer was not cashed, in fact, his recollection was that the check was cashed by Mr. Dyer as he was seen prior to his death with a large amount of money.

/s/ Nora L. Shaw
NORA L. SHAW

SUBSCRIBED AND SWORN to before me this 9th day of January 1995.

/s/ [Illegible]
NOTARY PUBLIC

My Commission Expires:
My Commission Expires Dec. 7, 1996

EXHIBIT 5

JAN J. RAVEN
P. O. Box 710
Phoenix, Arizona 85001
(602) 840-9118
State Bar Attorney No. 011676
ATTORNEY FOR PETITIONER

IN THE SUPERIOR COURT OF MARICOPA COUNTY, ARIZONA

STATE OF ARIZONA,	No. CR 90-00066
Respondent,	**AFFIDAVIT**
v.	Hon. Cheryl K. Hendrix
JEFFREY T. LANDRIGAN,	
Petitioner.	

STATE OF OKLAHOMA)
) **ss.**
COUNTY OF TULSA)

SHANNON SUMTER, being first duly sworn, upon her oath, deposes and says:

1. That she is the older sister of Petitioner, Jeffrey T. Landrigan.

2. That she grew up with Petitioner in the home of her biological parents, Edward and Dorothy Landrigan, who adopted Petitioner in 1962, and further that she remained in contact with her brother after he left his parents home as a young adult.

3. That Affiant is a practicing registered nurse.

4. That Affiant was aware of Petitioner's arrest and trial in this case and his subsequent sentencing and at no time was she contacted by Petitioner's trial attorney despite the fact that she was at all times ready and willing to offer whatever information and testimony necessary to assist Petitioner, particularly at sentencing.

5. That Affiant confirms that their mother, Mrs. Dorothy Landrigan suffered from alcoholism during the years when she was raising Jeffrey Landrigan and that illness caused problems and difficulties in the family during Petitioner's formative years, including arguments between Mrs. Landrigan and Petitioner over his schooling which became so significant that Mr. Landrigan was forced to stop traveling for his job to stay home.

6. That Affiant's earliest memory of Petitioner was that he had uncontrollable, outbursts of temper, occasionally violent, even as a young child which continued throughout his childhood and became more frequent as he grew older.

7. That as a registered nurse Affiant has training and experience with fetal alcohol syndrome and that, in her opinion, Petitioner exhibits signs and symptoms of suffering the ill effects of that syndrome including increased behavioral problems when he reached adolescence and an inability to realize, understand and appreciate the consequences of his actions.

8. That during 1989, the year before Petitioner was tried and sentenced in this case, [the sentencing occurred October 25, 1990] there were significant family crises of which Petitioner was aware that in Affiant's opinion had an adverse impact upon his mental state during the trial and sentencing. Those crises included finding that Edward

Landrigan had a life-threatening cardiac aneurysm which was inoperable and that, as a result he was unable to undergo hip replacement surgery so that he became an invalid confined to a wheelchair. Earlier that year Dorothy Landrigan suffered a stoke and was confined to a nursing home in which she remains. Finally, at that same time, Petitioner's maternal grandmother, was diagnosed with leukemia from which she ultimately died.

9. That Affiant has first hand knowledge that Petitioner was extremely close to his father, Edward Landrigan, and that he was also close to his maternal grandmother and mother.

Further, affiant saith not.

/s/ Shannon Sumter
SHANNON SUMTER
Affiant

SUBSCRIBED AND SWORN TO before me this 21 day of November, 1994.

3-20-96
My Commission Expires

/s/ [Illegible]
Notary Public

JAN J. RAVEN
P.O. Box 710
Phoenix, Arizona 85001
(602) 840-9118
State Bar Attorney No. 011676
ATTORNEY FOR PETITIONER

IN THE SUPERIOR COURT OF MARICOPA COUNTY, ARIZONA

STATE OF ARIZONA, Respondent, v. JEFFREY TIMOTHY LANDRIGAN Petitioner.	No. CR 90-00066 **Motion for Rehearing of Dismissal of Post-Conviction Relief Petition** Hon. Cheryl K. Hendrix (Filed Jan. 31, 1995)

NOW COMES Petitioner, through counsel undersigned, and respectfully requests that this Honorable Court grant this Motion to Rehear the dismissal of the Post Conviction Relief Petition for the reasons stated in the attached Memorandum of Points and Authorities.

RESPECTFULLY SUBMITTED this 31st day of July, 1995.

By /s/ Jan J. Raven
JAN J. RAVEN
Attorney for Petitioner

MEMORANDUM OF POINTS AND AUTHORITIES

Appellant seeks rehearing of two of the issues raised in this Honorable Court's Petition for the reasons advanced in his Petition and for the following further reasons.

I. Newly Discovered Evidence.

In its decision regarding Petitioner's claim of newly discovered evidence this Honorable Court concluded that the evidence was not newly discovered because it originally came to light in July, 1990. To constitute newly discovered evidence the evidence must have existed at the time of trial but be discovered after trial. Rule 32.1(e)(1), Arizona Rules of Criminal Procedure. This evidence was discovered in July, 1990, after trial. (Exhibit 1 attached to Petition) Admittedly it may have been discovered in sufficient time to raise this argument in a motion for new trial. However, Petitioner contends that if he is precluded from arguing that that evidence was newly discovered, then he is precluded from doing so because his trial counsel was not diligent in raising this issue in a motion for new trial pursuant to Rule 24, Arizona Rules of Criminal Procedure. Accordingly, Petitioner asserts that he was further deprived of effective representation by this failure of trial counsel. *See, e.g., Strickland v. Washington,* 466 U.S. 668 (1984), *State v. Lee,* 142 Ariz. 210, 689 P.2d 153 (1984).

Petitioner further maintains that the fact that the paycheck was never found or cashed should be considered by this Honorable Court at a hearing at least on the issue of whether it requires resentencing in this case. Petitioner respectfully reminds this Honorable Court that he was sentenced to death in part because this Court found that he had murdered the victim for something of pecuniary value pursuant to A.R.S. §13-703(F)(5). (1/25/90, 25) Aside from the contention that Petitioner had stolen the check and/or proceeds of the check from the victim, there was also a contention that he had stolen a tee shirt from the victim.

There was, however, direct evidence from the friends of the victim that established that Petitioner was at the victim's home as an invited guest. (6/19/90, 49-50) In addition, one of the victim's friends testified that he was a very generous man. That witness had no problem concurring in the possibility that the victim had given the tee shirt that the Petitioner was wearing to him. 6/19/90, 67-68)[1] If Petitioner did not take the paycheck then he is essentially on death row for wearing the tee shirt of the victim, a tee shirt which may very well have been given to him rather than stolen.[2]

There is a reasonable likelihood that this evidence, if presented at sentencing, could have affected the outcome. *See*, Rule 32.1(e), Arizona Rules of Criminal Procedure; *E.g., State v. Bilke,* 162 Ariz. 28, 51, 52, 781 P.2d 28, 29 (1989), *State v. Cooper,* 166 Ariz. 126, 129, 899 P.2d 992, 995 (App. 1990). Accordingly, Petitioner is entitled to have this Honorable Court reconsider whether a sentence of death can properly be supported upon such speculative allegations of the commission of a de minimus theft.

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[1] Indeed, the tee shirt Petitioner wore may not even have been the victim's. It was only established that the common shirt that Petitioner wore was one like a shirt the victim had had at some time prior to his death. (6/19/90, 65) It would be even further attenuated for Petitioner to be put to death because he had the misfortune to have a tee shirt that was like one that the victim had owned.

[2] Petitioner was convicted of felony murder with an underlying felony of burglary. This is not a case of premeditated first degree murder.

II. Ineffective Assistance of Counsel at Sentencing.

It appears from this Honorable Court decision regarding the claim of ineffective assistance of counsel (Minute Entry pgs 3-4) that Petitioner's claim was denied at least in part in agreement with the State's position that Petitioner had waived his right to present mitigation evidence at sentencing. (*See,* State's Response to Petition for Post-Conviction Relief, pg. 15) Petitioner contends, however, that it is a corner stone of criminal law that a waiver of a right must be knowingly, intelligently, and voluntarily entered into. *E.g., Johnson v. Zerbst,* 304 U.S. 458, 464 (1938).

The sentencing transcript does not establish that Petitioner knowingly, voluntarily, and intelligently, waived his right to present mitigation evidence at trial. Rather it shows that Petitioner gave up that right, without thought, in the heat of anger at and frustration with his attorney during that particular proceeding. Moreover, the affidavit of Petitioner's sister submitted in support of his original petition (Exhibit 5) establishes that in addition to laboring under the weight of the criminal proceedings against him, Petitioner was also suffering the ongoing effects of various family crises that left him in a state of grief and concern for his immediate family members. Petitioner, therefore, contends that he has shown prima facie evidence that he did not knowingly, intelligently, and voluntarily waive his right to present mitigation evidence at trial.

Petitioner further contends that this Honorable Court erred by finding that he is precluded from raising this issue in his petition pursuant to Rule 32.2(a)(2). Counsel on appeal raised only one issue of ineffective assistance of counsel. That issue was whether it was error for trial

counsel to advise his client not to talk to the presentence writer. *State v. Landrigan,* 176 Ariz. 1, 8, 859 P.2d 111 (1993). The issues of ineffective assistance of counsel raised by Petitioner are separate from that single issue. Petitioner, therefore, contends these separate claims should not be precluded by appellate counsel raising one ineffective assistance of counsel argument that is unrelated to those set forth in the Rule 32 Petition.

Moreover, it was the law well before Petitioner's appeal was filed that claims of ineffective assistance of counsel must be raised first in the trial court and that appellate courts will consider them if raised first on direct appeal only if they are clearly meritless. *State v. Carver,* 160 Ariz. 167, 175, 771 P.2d 1382, 1390 (1989), *State v. Marlow,* 163 Ariz. 65, 786 P.2d 395 (1989). The preclusion rule of Rule 32.2(a)(2), Arizona Rules of Criminal Procedure, also existed at the time Petitioner's appeal was filed. Accordingly, if Petitioner is precluded from raising this issue, as this Honorable Court found (Minute Entry dated July 20, 1995, at p. 4) then he is precluded because of ineffective assistance from appellate counsel and this Honorable Court must also consider this at hearing.

Petitioner respectfully requests that this Honorable Court reconsider its decision summarily dismissing his Post-Conviction Relief Petition and set this matter for an evidentiary hearing pursuant to Rule 32.8, Arizona Rules of Criminal Procedure.

RESPECTFULLY SUBMITTED this 31st day of July, 1995.

By /s/ Jan J. Raven
JAN J. RAVEN
Attorney for Petitioner

Copy of the foregoing pleading
mailed this 31st day of
July, 1995, to:

HON. CHERYL K. HENDRIX
Maricopa County Superior Court

JOSEPH T. MAZIARZ
Assistant Attorney General

JEFFREY T. LANDRIGAN
Petitioner

By /s/ Jan J. Raven
Jan J. Raven
Attorney

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IN THE SUPERIOR COURT OF MARICOPA COUNTY, ARIZONA

STATE OF ARIZONA Respondent, v. JEFFREY TIMOTHY LANDRIGAN, Petitioner.	No. CR 90-00066 **Petition for Review in the Arizona Supreme Court**

NOW COMES Petitioner, through counsel undersigned, and pursuant to Rule 32.9, Arizona Rules of Criminal Procedure, respectfully requests that the Arizona Supreme Court grant this Petition for Review of the decision of Judge Cheryl K. Hendrix dated July 17, 1995, summarily dismissing the Post Conviction Relief Petition.[1]

I. SYNOPSIS OF MARICOPA COUNTY SUPERIOR COURT DECISION.

The trial court rejected Petitioner's claim that death qualifying the jury was improper holding that he was

[1] By Minute Entry dated September 8, 1995, Judge Cheryl K. Hendrix denied Petitioner's Motion for Rehearing of the dismissal of the post-conviction relief petition. (Appendix B)

precluded from raising that issue and finding that the questioning was proper. *State v. Landrigan*, CR 90-00066, Minute Entry dated July 17, 1995, pgs. 1-2 (Appendix A).

Petitioner's contention that there was newly discovered evidence entitling him to a new trial was dismissed by the trial

* * *

Petitioner the tee shirt he was wearing. (Appendix P)[3] In short, Petitioner is on death row for wearing a tee shirt like one of the victim's, a tee shirt which may very well have been given to him rather than stolen.

There is a reasonable likelihood that the newly discovered evidence, if presented at trial or at sentencing, could have affected the outcome of either proceeding. *See*, Rule 32.1(e), Arizona Rules of Criminal Procedure. *E.g.*, *State v. Cooper,* 166 Ariz. 126, 129, 899 P.2d 992, 995 (App. 1990), *State v. Bilke,* 162 Ariz. 28, 51, 52, 781 P.2d 28, 29 (1989). Accordingly, Petitioner is entitled to a new trial or to resentencing.

C. Ineffective Assistance of Counsel at Sentencing.

Under both the United States and Arizona Constitutions, "[t]he right to effective assistance of counsel is a

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[3] The tee shirt Petitioner wore may not even have been the victim's. It was only established that the common shirt that Petitioner wore was one like a shirt the victim had had at some time prior to his death. It would be even further attenuated for Petitioner to be put to death because he had the misfortune to have a tee shirt that was like one that the victim had owned.

fundamental right." *State v. Lee,* 142 Ariz. 210, 216; 689 P.2d 153, 159 (1984). *Accord, Strickland v. Washington,* 466 U.S. 668 (1984). The same standard is used to determine whether counsel was ineffective at sentencing as at any other stage of the proceedings. *E.g., Evans v. Lewis* 855 F.2d 631, 636 (9th Cir. 1988). Counsel has a duty to undertake reasonable investigations or to make a reasonable decision that particular investigation is unnecessary. *Strickland v. Washington,* 466 U.S. at 691. A claim of ineffective assistance of trial counsel requires proof that counsel's performance was deficient and that the defendant was prejudiced by that deficient performance. To establish deficient performance it must be shown that counsel's performance fell below an objective standard of reasonably effective assistance under the prevailing professional norms. To demonstrate prejudice it must be shown that but for trial counsel's deficient performance there is a reasonable probability that the result would have been different. *Strickland v. Washington, supra; State v. Nash,* 143 Ariz. 392, 694 P.2d 222 (1985); *State v. Lee, supra.* A "reasonable probability" is "a probability sufficient to undermine confidence in the outcome." *Strickland v. Washington,* 466 U.S. at 693-694. Prejudice analysis does not depend on whether the outcome of the proceeding would have been different. *Lockart v. Fretwell,* 133 S.Ct. 838 (1993). Analysis of the prejudice prong is directed to determining whether the proceeding was fundamentally unfair. *Id.* at 842. *See, United States v. Cronic,* 466 U.S. 648 (1984).

Petitioner contends that there were two ways in which trial counsel was ineffective at sentencing. First, counsel made arrangements to present mitigation evidence from Mr. Landrigan's biological mother and former wife. Mr.

Landrigan's mother was to testify concerning her use of drugs and alcohol during her pregnancy with Mr. Landrigan. Ms. Landrigan was to present testimony that Petitioner's prior conviction for second degree murder, had resulted from an altercation which was more in the nature of an act of self-defense to mitigate the impact of that conviction. At Mr. Landrigan's request those witnesses did not testify. There were, however, alternative sources of that information which were not explored by counsel. Mr. Landrigan's biological father, Mr. Darrell Hill was an available source of that information. He was not contacted by counsel. (Appendix Q) Mr. Landrigan's adopted sister, a registered nurse, was not contacted by counsel and she has had experience with Petitioner and as a professional with fetal alcohol syndrome. She was available and willing to testify on Petitioner's behalf in that regard. (Appendix R) As to the fact that there was evidence that Mr. Landrigan may have acted in self defense in the earlier case, there was the reported decision of the Court reversing his earlier conviction. *Landrigan v. State,* 700 P.2d 218 (Okla. 1985) (Appendix S)

Second, trial counsel was ineffective because he failed to explore additional grounds for arguing mitigation evidence. Petitioner's sister, Shannon Sumpter, would also have verified that their mother, Mrs. Landrigan, was an alcoholic and that her disease caused significant problems within the family which impacted adversely on Petitioner as he was growing up. Ms. Sumpter would have provided that information to the Court had she been contacted by counsel. She would, moreover, have provided additional information concerning familial problems which preceded the time of sentencing and which may have offered at least a partial explanation of Petitioner's conduct at sentencing.

(Appendix R) There was another source of mitigation evidence regarding Petitioner that is most significant and was not investigated. Petitioner's biological family demonstrates a long history of violent behavior. That history includes Petitioner's biological father, Mr. Darrell Wayne Hill, who was, at the time of Petitioner's trial and sentencing on death row in the state of Arkansas.[4] (Appendix T)

Research has long been conducted which recognizes that the propensity to commit violent acts may well have a biological component. When a biological component is added to the fact that Petitioner was raised in the dysfunctional home of an alcoholic and that he was very likely damaged by the prenatal alcohol and drug use of his biological mother, the propensity for violence becomes almost a certainty. Dr. Frank A. Elliott summarized this theory:

> "Although environmental factors contribute to violence, they are seldom its sole cause because behavior is a biosocial affair, the result of interactions between the brain, environmental situations, and endogenous drives. Thus, the nature of the brain's response to a stimulus depends on the confluence of both biological and environmental variables at ta particular moment. An unfavorable environment often operates selectively to produce antisocial behavior in certain individuals who are especially vulnerable by reason of inherited or acquired neurophysiological traits. Exclusively sociological theories fail to explain why hard-core criminal violence runs like a scarlet thread through the fabric of all societies, *in good*

[4] Mr. Hill was to be retried for that offense after reversal of his conviction. *See, Hill v. Lockhart,* 824 F.Supp. 1327 (E.D.Ark. 1993).

> *times and in bad, and affects all classes.* Nor do they explain why even in times of anomie, when violence spreads, it still involves only a relatively small portion of the population or why it is that many individuals who are exposed to criminogenic influences in early life do not become violent as adults, or why a significant number of people who have not been exposed to such influences do become pathologically aggressive." Elliott, Frank A. (1988), Violence: A product of biosocial interactions, 16 *The Bulletin of the American Academy of Psychiatry and The Law,* 133.

There are many reputable authorities which have recognized and studied the biological component of violent behavior. *See, e.g.,* Volavka Jan, M.D., Martell, Dan, and Convit, Antonio, M.D., (1992) Psychobiology of the Violent Offender, 37 *Journal of Forensic Sciences,* 237-251 (Appendix U [reference pages omitted]); Mednick, Sarnoff, Kandel, Elizabeth (1988) Congenital Determinants of Violence, 16 *The Bulletin of American Academy of Psychiatry & Law,* 101-109. (Appendix V).

Petitioner is a classic example of the case studies showing that violent behavior has a biological component. He was adopted as a baby and did not know his biological history until he himself was incarcerated in the state of Oklahoma. (Appendix R) As stated by Professor Lee Ellis regarding conclusions reached through such "persuasive" adoption studies, " . . . [E]vidence of genetic involvement in criminality is now approaching the limits of certainty."[5]

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[5] Marsh, Frank H. and Katz, Janet, (1985), *Biology Crime & Ethics,* Chapter 2, p. 81.

A sentence of death must be tailored to personal responsibility and moral guilt. *South Carolina v. Gathers,* 490 U.S. 805 (1989); *Emmund v. Florida,* 458 U.S. 782, 801 (1982). Where a defendant's crime is attributable to a disadvantaged background or emotional or mental problems the defendant is less culpable than one without the excuse. *California v. Brown,* 479 U.S. 538, 545 (1987) (O'Connor, J., concurring). *See, also, State v. Wallace,* 160 Ariz. 424, 427, 773 P.2d 983, 986 (1989), *cert. denied,* 494 U.S. 1047 (1990). Due to ineffective assistance from trial counsel at sentencing, the sentencing court did not have a complete and accurate picture of Petitioner's background and could not tailor his sentence to his personal responsibility and moral guilt. Petitioner was entitled to an evidentiary hearing and the opportunity to establish his entitlement to relief on this basis. *State v. Sutton* 143 Ariz. 234 (App. 1984); *State v. Suarez,* 23 Ariz.App.,530 P.2d 402 (1975). The trial court denied Petitioner a hearing on this issue at least in part because it found that Petitioner had waived his right to present mitigation evidence at sentencing. (Appendix A, pgs. 3-4) However, waiver of a right must be knowing, intelligent, and voluntary. *E.g., Johnson v. Zerbst,* 304 U.S. 458, 464 (1938). Petitioner did not validly waive that right. Rather he gave it up without thought, in the heat of anger at and frustration with his attorney. Moreover, in addition to laboring under the weight of the criminal proceedings, Petitioner was also suffering the ongoing effects of various family crises that left him in a state of grief and concern for his immediate family members. (Appendix R) Petitioner, therefore, contends that he has shown prima facie evidence that he did not knowingly, intelligently, and voluntarily waive his right to present mitigation evidence at trial. Petitioner also contends that the trial court erred by finding that he

was precluded from raising this issue in his petition pursuant to Rule 32.2(a)(2). Counsel on appeal raised only one issue of ineffective assistance of counsel concerning trial counsel's advice his client not to talk to the presentence writer. *State v. Landriaan,* 176 Ariz. 1, 8, 859 P.2d 111 (1993). The issues of ineffective assistance of counsel raised by Petitioner are separate from that single issue and should not be precluded. Moreover, it has long been established that claims of ineffective assistance of counsel must be raised first in the trial court and that appellate courts will consider them if raised first on direct appeal only if they are clearly meritless. *State v. Carver,* 160 Ariz. 167, 175, 771 P.2d 1382, 1390 (1989), *State v. Marlow,* 163 Ariz. 65, 786 P.2d 395 (1989). The preclusion rule of Rule 32.2(a)(2), Arizona Rules of Criminal Procedure, also existed at the time Petitioner's appeal was filed. Accordingly, if Petitioner is precluded from raising this issue, he is precluded because of ineffective assistance from appellate counsel.

D. Court's Consideration of Presentence Report.

At sentencing the trial court considered a presentence report which contained a statement from the victim's brother unequivocally stating that his opinion was that a sentence of

* * *

constitutionally imposed. *See, Callins v. Collins,* ___ U.S. ___, 114 S.Ct. 1127, ___ L.Ed.2d ___, (1994). *Contra, Gregg v. Georgia,* 428 U.S. 153, 96 S.Ct. 2909, 49 L.Ed.2d 859 (1976).

F. Proportionality review is constitutionally required.

In *Salazar,* 173 Ariz. at 416-17, 844 P.2d at 583-84 (1992) *cert. denied,* ___ U.S. ___, 113 S.Ct. 3017 (1993), this Court rejected proportionality review. Appellant urges this Court to reconsider its holding because proportionality reviews provide the "heightened scrutiny" required in death penalty cases. *Mills v. Maryland,* 486 U.S. 367, 383-84 (1988) That review "hold[s] error and injustice to a minimum." *Salazar,* 173 Ariz. at 419, 844 P.2d at 586 (Feldman, C.J., concurring). *See also State v. White,* 168 Ariz. 500, 525-26, 815 P.2d 869, 894-95 (1991), *cert. denied,* 112 S.Ct. 1199 (1992) (Feldman, V.C.J., concurring).

V. CONCLUSION.

Petitioner, Jeffrey T. Landrigan, respectfully requests that this Honorable Court grant this Petition for Review and reverse the decision of the trial court summarily dismissing his Post Conviction Relief Petition and either remand for retrial or resentencing; or, remand for an evidentiary hearing pursuant to Rule 32.8, Arizona Rules of Criminal Procedure.

RESPECTFULLY SUBMITTED this 5th day of October, 1995.

By /s/ Jan J. Raven
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

JEFFERY TIMOTHY LANDRIGAN, f.k.a. Billy Patrick Wayne Hill, Petitioner, vs. TERRY STEWART, et al., Respondents.	)	CIV-96-2367-PHX-ROS

AMENDED MEMORANDUM REGARDING MERIT CLAIMS

Petitioner Jeffery Timothy Landrigan, pursuant to an order of the Court,[1] offers his amended memorandum addressing the merits of the claims as alleged in the First Amended Petition for Writ of Habeas Corpus Under 28 U.S.C. § 2254 by a Person in State Custody ("First Amended Petition") that are now pending before the

[1] District Court Docket Entry No. ("Doc. No.") 68 at 40.

Court.[2] Also pending before the Court is Landrigan's Motion for Order to Allow Further Neurological Testing.[3]

I. Introduction.

Billy Patrick Wayne Hill, n.k.a. Jeffrey Timothy Landrigan, landed on death row and was

* * *

IV. Evidentiary hearing.

Landrigan is requesting an evidentiary hearing pursuant to Habeas Rule 8, so that he may present additional information to the Court which will further support certain allegations now pending. Landrigan will address the specific requests under the relevant claims. The authority for the Court to conduct an evidentiary hearing follows.

A. Relevant facts.

Landrigan was denied an evidentiary hearing in the state collateral proceedings. Landrigan's post-conviction petition contained five (5) claims, for relief and was supported by nine (9) fact-specific exhibits. Landrigan requested an evidentiary hearing.[306] Landrigan requested funding, *inter alia,* for an expert to evaluate evidence and

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[2] Landrigan has also filed Motion to Expand the Record Under Rule 7 of the Rules Governing Section 2254 Cases in the United States District Courts ("Rule 7 Motion"), a Motion for Discovery, and a Motion for an Evidentiary Hearing, along with the filing of his Response.

[3] Doc. No. 71.

[306] Td. at 137, p. 23.

offer testimony regarding fetal alcohol syndrome.[307] Landrigan sought this expert in order to demonstrate the adverse effects of substance abuse by the mother on the fetus during pregnancy. The superior court denied the motion for evidentiary hearing and denied Landrigan's petition seeking post-conviction relief.[308] In so doing, and rather than reviewing each claim; the superior court simply adopted the position set forth by the state in its response to Landrigan's post-conviction petition.

B. Argument.

The Supreme Court has established six circumstances under which a district court must provide a habeas petitioner an evidentiary hearing: (1) the merits of a factual dispute were not resolved in a state court proceeding; (2) the state court factual determination is not supported by the record; (3) the fact finding procedure used by the state was inadequate to afford a full and fair hearing; (4) there is a substantial allegation of newly discovered evidence; (5) the material facts were not adequately developed in a state court proceeding; and (6) for any reason it appears that the state trier of fact did not afford the habeas applicant a full and fair hearing. *See Townsend v. Sain,* 372 U.S. 293, 312-13 (1963), *overruled on other grounds, Keeney v. Tamayo-Reyes,* 504 U.S. 1 (1992).[309] The *Townsend* factors were later codified in 28 U.S.C. § 2254(d). *Otsuki v. Dubois,* 994 F. Supp. 47, 50 n.2 (D. Mass. 1998).

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[307] Td. Dec. 5, 1995 at 124.

[308] Td. Dec. 5, 1995 at 140.

[309] *Keeney* overruled the fifth situation, *see, e.g., Chacon v. Wood,* 36 F.3d 1459, 1466 (9th Cir. 1994), which is not relevant here.

Under the former version of the habeas statute, a petitioner was entitled to an evidentiary hearing if he or she established one of the factors. *See id.* n.1.

Under the Anti-terrorism and Effective Death Penalty Act ("AEDPA"), codified in part in 28 U.S.C. § 2254, these factors are not listed. *See* 28 U.S.C. § 2254 (Supp. 1998). In addition, subsection (e) was added to section 2254. *See id.* This subsection provides that a district court is not required to hold an evidentiary hearing if the petitioner has "failed to develop the factual basis of his claim in State court proceedings." *Id.* § 2254(e)(2). Courts have held that this subsection applies only when the petitioner has, through his own actions, "failed to develop the factual basis of his claim." *Burris v. Parke,* 116 F.3d 256, 258-59 (7th Cir. 1997). In all other situations, courts continue to apply the *Townsend* analysis, *see, e.g., Totten v. Merkle,* 137 F.3d 1172, 1176 (9th Cir. 1998); *Spreitzer v. Peters,* 114 F.3d 1435, 1456 n.9 (7th Cir. 1997), and grant evidentiary hearings as long as the petitioner has met one of the *Townsend* factors.

In *Jones v. Wood,* 114 F.3d. 1002 (9th Cir. 1997), for example, the petitioner attempted to develop an ineffective assistance of counsel claim at the state court level, but the Washington Court of Appeals denied his collateral petition without an evidentiary hearing. *See id.* at 1012. Accordingly, the Ninth Circuit held that Jones did not "fail" to develop the factual basis of his claim. Rather, the Court reasoned, "he was never given the opportunity to do so . . . ." *Id.* Accordingly, the Ninth Circuit reversed the district court's refusal to grant an evidentiary hearing. *See id.* at 1013.

Similarly, in *Correll v. Stewart,* 137 F.3d 1404 (9th Cir. 1998), the petitioner diligently attempted to pursue his ineffective assistance of counsel claim in state court but failed through no fault of his own. There, the state "denied Correll's repeated request for an evidentiary hearing." *Id.* at 1413. The Ninth Circuit declared that "the state cannot now insist the obstacle it placed in Correll's path when he sought a state-court hearing and the means to present evidence at that hearing should again prevent Correll from securing a federal evidentiary hearing." *Id.* at 1414. *(citing Jones,* 114 F.3d at 1012-13).[310] The court reversed the district court's refusal to grant an evidentiary hearing. *See id.* at 1415.

Both *Jones* and *Correll* were pre-AEDPA cases. However, neither case would be decided differently under the AEDPA amendments to 28 U.S.C. § 2254. The statute now provides that a district court shall not hold an evidentiary hearing "[i]f the applicant has failed to develop the factual basis of his claim in State court proceedings," unless the petitioner can satisfy the further provisions of § 2254(e)(2)(A) & (B). As the post-AEDPA cases reveal, failure to develop the factual basis of a claim means that the deficiency of the record must be due to something the petitioner did or omitted.

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[310] *See also Grisby v. Blodgett,* 130 F.3d 365, 367-68 (9th Cir. 1997). The Ninth Circuit remanded for a determination as to whether, under the proper standard, an evidentiary hearing should be held on petitioner's claim that the prosecution failed to disclose a deal with its key witness. Because petitioner's proffered evidence suggested that the witness gave perjured testimony, the district should have considered the claim under the "any reasonable likelihood" standard.

In *Jones v. Wood,* the Ninth Circuit, while refusing to apply the AEDPA to the pre-Act case, pointed out that petitioner would be entitled to an evidentiary hearing under new §2254(e)(2).

> It is clear that Jones did not "fail[ ]to develop" the factual basis of either of his claims, rather, the state courts denied him the opportunity to develop the facts by failing to hold an evidentiary hearing. Where, as here, the state courts simply fail to conduct an evidentiary hearing, the AEDPA does not preclude a federal evidentiary hearing on otherwise exhausted habeas claims.

114 F.3d. at 1013.

The Seventh Circuit has espoused similar reasoning. In *Burris v. Parke,* the court explained that "[f]ailure implies omission – a decision not to introduce evidence when there was an opportunity, or a decision not to seek an opportunity," and that, "[t]o be attributable to a 'failure' under federal law the deficiency in the record must reflect something the petitioner did or omitted." 116 F.3d at 258.

Rejecting the district court's reading of §2254(e)(2), the Seventh Circuit declared that "the word 'fail' cannot bear a strict-liability reading, under which a federal court would disregard the reason for the shortcomings of the record." *Id.* The court therefore determined that "§2254(e)(2) does not matter to this case," since petitioner was erroneously denied an opportunity to develop facts in state proceedings. *Id.*

The Third Circuit also agrees with the Seventh and Ninth Circuits. In *Love v. Morton,* 112 F.3d 131 (3rd Cir. 1997), the Third Circuit also had the occasion to interpret §2254(e)(2). It held that:

> [s]ection 2254(e)(2) applies to applicants who "failed to develop the factual basis of a claim in State court proceedings." In this case, Love did not "fail" to develop the basis of his claim. * * * Under the [] circumstances [of this case] we are unwilling to conclude that Love failed to develop the factual basis of his claim in the state court proceedings. We conclude that factors other than the defendant's action prevented a factual record from being developed. *See* Statement by President William J. Clinton Upon Signing S.1965, [opining that §2254(e)(2) is not triggered when some factor that is not fairly attributable to the applicant prevented evidence from being developed in State court]. Although the President's statement is not evidence of congressional intent, we refer to it because we agree with his interpretation of the plain language of §2254(e)(2), and we find no contrary interpretation in the legislative history of the 1996 amendments to §2254.

Id. at 136.

Thus, the Circuits that have addressed the issue have uniformly held that, in order to "fail" to develop the factual basis of his claim, the habeas petitioner must do or not do something that causes the deficiency in the record. This was the rule before the passage of the AEDPA and remains the rule after its passage.

C. Landrigan did not "fail" to develop his factual claims and is therefore entitled to an evidentiary hearing.

Where the state procedure was inadequate to afford the petitioner a full and fair hearing, the district court

must hold an evidentiary hearing on habeas review. *See Townsend,* 372 U.S. at 312-13.

Here, by refusing to hold an evidentiary hearing, the state court's procedures were inadequate to provide Landrigan a full and fair opportunity to litigate the claims in state court. Landrigan did not "fail" to develop the factual basis for his claims. Any deficiency in the factual record is not due to anything Landrigan did or did not do. Rather, the deficiency is due to the state's refusal to hold an evidentiary hearing. The state's refusal does not bar Landrigan from obtaining an evidentiary hearing. To hold otherwise would allow the state to preclude collateral attack in federal habeas proceedings simply by denying evidentiary hearings in its courts. *See Burris,* 116 F.3d at 259. But, "[n]othing in § 2254(e) or the rest of AEDPA implies that states may manipulate things in this manner." *Id.*

Landrigan sought collateral relief pursuant to Ariz. R. Crim. P. 32 in the Maricopa County Superior Court. Landrigan requested an evidentiary hearing.[311] During post-conviction proceedings in state court, Landrigan, *inter alia,* requested funding for an expert to evaluate evidence and offer testimony regarding fetal alcohol syndrome.[312] Landrigan sought this expert in order to demonstrate the adverse effects of substance abuse by the mother on the fetus during pregnancy.

The state filed a reponse stating that three of the claims were precluded, one was frivolous and one was

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[311] Td. Dec 5, 1995 at 137, p. 23.

[312] Td. Dec. 5, 1995 at 124.

waived.[313] The state's response was not supported by evidence or documents outside of the trial court record. The state also opposed Landrigan's request for the appointment of experts.[314]

The superior court denied the motion for evidentiary hearing and denied Landrigan's petition seeking post-conviction relief.[315] In so doing, and rather than reviewing each claim, the superior court simply adopted the position set forth by the state in its response to Landrigan's post-conviction petition.

Landrigan submitted evidence to support his request for an evidentiary hearing. Although the evidence he presented to the state post-conviction court went a long way toward establishing constitutional violations, it was necessary for the evidence and testimony to be further developed through the normal discovery process and an evidentiary hearing – a process available to other litigants in state court where much less is at stake. Discovery and an evidentiary hearing would have permitted Landrigan to present to the state court a fully completed picture of what went wrong during the trial.

In this case the State of Arizona has prevented the factual development of Landrigan's constitutional claims in the state post-conviction courts. The failure to allow Landrigan to fully develop his allegations in state court rendered that procedure inadequate. "[T]he state cannot now insist the obstacle it placed in [Landrigan's] path

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[313] Td. Dec. 5, 1995 at 138, pp. 10-18.

[314] Td. Dec. 5, 1995 at 125.

[315] Td. Dec. 5, 1995 at 140.

when he sought a state-court hearing and the means to present evidence at that hearing should again prevent [him] from securing a federal evidentiary hearing." *Correll v. Stewart,* 137 F.3d 1404, 1414 (9th Cir. 1998). Landrigan is now entitled to develop and litigate the factual basis for his federal constitutional claims in federal court. Landrigan will address specific instances in which an evidentiary hearing is necessary at Part V, *infra.*

V. Response to specific claims.

A.

In his first claim for relief, Landrigan alleged that the death qualification of the jury by the trial court violated his rights as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution.

1. Relevant facts.

Landrigan objected to the trial court questioning members of the venire about their views on the death penalty.[316] Despite this objection, the trial court made the following inquiry to the members of the venire.

> Are there any of you here that have strong feelings concerning the death penalty whereby you would tend to avoid finding a defendant guilty knowing that the possible punshment (sic) could be death?
>
> * * *

[316] Td. Dec. 4, 1990 at 40.

> Is there anyone here that has strong opinions concerning the death penalty, with your opinions being so strong it might influence the way you view the evidence in this case?
>
> Is there anyone here who would prefer not to sit as a juror because of the nature of the charges?[317]

The trial court made this inquiry despite the fact that in Arizona, the trial judge, and not the jury, determines the sentence.[318]

Sixteen jurors expressed a preference to not serve on the jury due to the fact that death was a

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he will inquire as to policies for funding in the Office of Maricopa County Public Defender in 1989 and 1990. Testimony will be taken pursuant to Fed. R. Civ. P. 30.

The factual information Landrigan seeks has not been previously presented. On direct appeal, Landrigan was limited to the record of the trial proceedings. In collateral proceedings, Landrigan sought an evidentiary hearing and the state court denied his request. *See* Part II(Z)(1) and (2), and Part IV, *supra*. The state procedure was inadequate to afford the petitioner a full and fair hearing.

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[317] TR Jun. 18, 1990 (I) at 58-59.

[318] *See Ariz.* Rev. Stat. § 13-703(B), *see also* TR Jun. 18, 1990 (I) at 58.

6. An evidentiary hearing is necessary.

Landrigan requested an evidentiary hearing in state collateral proceedings on his claim of ineffective assistance of counsel. The state court, without comment, denied Landrigan's request for an evidentiary hearing.

To obtain an evidentiary hearing on an ineffective assistance of counsel claim in this Court, a habeas petitioner must establish that (1) his allegations, if proven, would constitute a colorable claim, thereby entitling him to relief and (2) the state court trier of fact has not, after a full and fair hearing, reliably found the relevant facts. *See Jones v. Wood,* 114 F.3d 1002, 1010 (9th Cir. 1997); *Hendricks v. Vasquez,* 974 F.2d 1099, 1103 (9th Cir. 1992).

If the petitioner has failed to develop material facts in state court proceedings, he or she must demonstrate adequate cause for his or her failure and actual prejudice resulting from that failure. *See Keeney v. Tamayo-Reyes,* 504 U.S. 1, 11 (1992). To fulfill the "cause" requirement, the petitioner must demonstrate that he "tried and failed through no fault of his own to develop the facts relevant to his ineffective assistance claim at the state court level in the only permissible manner." *Jones,* 114 F.3d at 1012-13; *Correll v. Stewart,* 137 F.3d 1404, 1414 (9th Cir. 1998). The *Tamayo-Reyes* prejudice requirement is co-extensive with the prejudice prong of *Strickland. See Correll v. Stewart,* 137 F.3d at 1414.

The actions of the state court cannot divest a petitioner of any meaningful opportunity to present evidence at the state level.

> When a state court denies an evidentiary hearing on a colorable ineffective assistance of counsel claim after proper request, a habeas petitioner

> has fulfilled the *Tamayo-Reyes* "cause" requirement. Simply put, the state cannot successfully oppose a petitioner's request for a state court evidentiary hearing, then argue in federal habeas proceedings that the petitioner should be faulted for not succeeding.

Correll v. Stewart, 137 F.3d at 1413.

Landrigan has alleged facts that, if taken as true, constitute a colorable claim of ineffective assistance of counsel. In addition, Landrigan has "'undermine[d] confidence in the outcome of his sentencing, thereby establishing the requisite Strickland prejudice." *Correll,* 137 F.3d at 1413, *citing Strickland,* 466 U.S. at 694-96. Accordingly, this Court should conduct an evidentiary hearing, as Landrigan has sufficiently set forth a claim of ineffective assistance of counsel and resulting prejudice.

At the evidentiary hearing, Landrigan will offer the testimony of Dennis Farrell, Landrigan's trial counsel. Landrigan intends to seek testimony regarding Mr. Farrell's qualifications, experience, credentials; and the investigation conducted in preparation for the trial and sentencing phases of Landrigan's case. Landrigan will also put forward the testimony of an attorney who is qualified to represent persons in capital proceedings to offer proof of the standards Mr. Farrell was required to meet under the first prong of *Strickland.*

In order to establish prejudice, Landrigan intends to offer the testimony of Dr. Thompson, *inter alia.* Dr. Thompson, who is qualified as an expert, will testify regarding Landrigan's organic brain dysfunction, which pre-dated the crime; Landrigan's family history; the genetic factors and the in utero exposure to alcohol that

contributed to the neurobiological dysfunction; as well as to Landrigan's competency to assist in his own defense at trial and sentencing. Dr. Thompson will explain in detail the reasons for his conclusion that Landrigan had brain dysfunction well before the crime. In addition, he will testify as to the validity, reliability, and general professional acceptability of the testing methods he employed. Finally, Dr. Thompson will offer a more thorough and detailed explanation of Landrigan's brain impairment and its subsequent effects on his behaviors.

D.

In the seventh claim for relief, Landrigan alleges his rights to have a jury determine the existence of mitigating circumstances and take part in the sentencing decision as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution were violated.

* * *

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA (Phoenix Division)
No. 2:96-cv-02367-ROS

[Caption Omitted In Printing]

Motion To Expand The Record Under Rule 7
Of The Rules Governing Section 2254 Cases

The exhibits on the following pages were filed with the Court as a part of this Motion on November 17, 1998 and entered on November 18, 1998.

MICKEY MCMAHON, Ph.D.
Clinical & Consulting Psychologist
5150 N. 16th St., Suite A-122
Phoenix, AZ 85014
(602) 997-6315

PSYCHOLOGICAL REPORT

Name: Landrigan, Jeffrey T. (AKA: Page, Jeffrey D.)
CR 90-00066 Date: 7/15/90

Referral: The client was referred by his attorney, Dennis Farrell in regard to a death sentence hearing.

Documents Reviewed: The following documents were sent to me by defense counsel and reviewed as part of this evaluation:

> Phoenix Police DRs, #89-186504
> Forensic Assessment Form as part of Attorney/Client Communications

Offense: The client was convicted of first degree murder in the death of a homosexual who was attempting to seduce him.

Background Information: The client was born on 3/17/62. Nine months after his birth, he was placed with foster parents who he later came to call mother and father.

He understands that his birth mother was a drug abuser, injecting amphetamines among other things. His birth father had done time in prison and had a history of physically abusing mother, even trying to kill her on three occasions, according to what mother told the defendant.

Foster mother sounds like a serious alcoholic from what the client told me: She drank Seagram 7 every day, primarily in

the evenings. She would get home from work around 5:00pm and "be passed out by 9:00pm on the couch." However, she got up and went to work the next day, working for Phillips Petroleum for 15 years.

Mother also sounds like a prescription drug addict in that she took prescription "tranquilizers" every day from as early as the client can remember as a young child.

The only time the client can remember not getting slapped was during the summer when he and his mother went to visit the maternal grandmother in Texas. Mother eliminated her drinking and never slapped the client during the time she was around grandmother.

While at grandmothers, the client's life was dramatically improved. Grandmother was a "great cook" and would always treat him with wonderful food. When the client left home at age 16, he went to Texas and spent a great deal of time with grandmother. Although he moved out into his own place after a week or so, he went to visit her every other day, ate her good cooking, and sat around talking to her about life and how to live it. Since grandmother always cooked more than they needed, he was able to "feast" at home and have something to eat there as well. Grandmother died three days before the client escaped from the Oklahoma prison.

Foster father was not abusive like mother but would go get her a bottle of whisky when she wanted it. He, himself, did not abuse alcohol or drugs, according to the client. There were arguments with mother but that usually involved mother doing all the screaming.

The client was involved in a number of traumatic experiences early in his life that undoubtedly are related to the

murders he has been convicted of. For example, being slapped by his foster mother as a standard form of discipline when she was continually drinking could not have helped but make a significant impact on his future development.

In addition, the client's history includes a number of potentially traumatic, life-threatening events when he was a young boy and did not have the adult psychological defenses to deal with them that he later developed.

For example, he saw a boy shot in the chest when he was only 13 years of age. When the client first recalled that event (when asked what was the earliest age he could remember seeing anyone killed) his voice noticeably cracked and there was a slight stammer, indicating that even though 15 years have passed since the incident, and he has been witnessed other violent events, he still has an automatic, normal reaction to accessing that first experience of the death of another human being. In addition, even though he and some friends self-medicated the trauma by going out and drinking some more, he still had flashbacks for a number of mornings, upon awakening.

At age 14, the client had another potentially traumatic event happen to him when someone pointed a gun at him in a argument at another party. The assailant was drunk and so was unpredictable with the gun in his hand, adding to the potential psychic trauma the client incurred. The client admits that his heart was pounding in his chest and he stammered in his speech. He did not feel like he had much of a reaction to it during the incident (as is his typical way of psychologically defending himself), although he admits there was a delayed reaction afterwards.

He handled that by increasing his drinking and socializing.

Again, at age 14, the client was hospitalized by his father when he wouldn't get out of bed and kept sleeping after taking quaaludes. While in the hospital he had an allergic reaction to the mediation he was prescribed and/or the withdrawal from the quaaludes: He acted in a bizarre way, kept falling down, and threw things through windows.

At age 17, he saw a man, who had been run over, laying dead on the freeway and had a "spooky feeling" come over him even though he did not know the man.

As part of his religious orientation, he has heard people speak in tongues, which is a typical occurrence in the charismatically oriented churches. However, he has had some visions and/or illusions of the devil, hallucinating the devil's face with flames being drawn on his face. At the time he volunteers that he was taking amphetamines. It is well-known that amphetamine abuse, particularly if prolonged, such as the client's has had, will typically produce such hallucinations, even delusions.

Drug & Alcohol History: The client stated that he began drinking at age 10 when he sneaked alcohol out of his mother's Seagram 7 supply; however, he didn't like the taste. At age 12, he began to drink beer on Friday and Saturday nights in rural Oklahoma with other boys his age, generally a 6-pack. At age 13, he began to drink whatever alcohol was on hand, liquor or beer. By age 16, he and four or five friends would drink almost every night, beginning around 3:00pm and quitting around 11:00pm in the evening. That pattern continued until he was sentenced to prison in Oklahoma in 1981 for possession of marijuana.

When he got out of prison after approximately one year, he got married, had a child, and generally drank about 3-4 times per week with his buddies and his wife. He continued this pattern for approximately one year before he was sentenced to a 40 year prison term for murder within approximately one year.

At age 14, he began to abuse speed and acquired a life-long preference for it among the drugs he has tried in the past. The longest he has abstained from abusing amphetamines since age 14 has been "several months." In fact, he states that he did speed every day for the 42 days from the time he escaped from the Oklahoma prison to the time he was taken into custody in Phoenix. He goes on to admit that he only slept 14 days out of the 42 he was out, which could not help but have had an effect on his behavior at the time of the commission of the present murder charge. Finally, he admits that he "snorted" amphetamine about one and one-half hours prior to the offense and estimates that he was at the "peak" of the drug effect at the time of the offense itself.

In addition, he has also abused marijuana quite extensively for over 16 years, at the rate of "at least once a week."

Psychological Findings: The results from the clinical interview, records review, and psychological testing (Rorschach, Williamson Sentence Completions) revealed the following picture, relative to the two murders the client has been convicted of:

The client was drinking, along with the victim, when he became involved in the Oklahoma murder for which he was sentenced to a 40 year term. According to him, he had been drinking beer from approximately 10:00am to 8:00pm

and was at a party. The victim had been a drinking buddy. They started out just horseplaying around, but it got out of hand and they became angry at each other. According to the client, the victim "grabbed me by the throat and pushed me up against a wall." The client pulled out a "buck knife" and told the victim to get out of the way so his wife and he could leave. The victim said, "Come on, let's see you leave"! The client then stabbed him.

It should be noted that one week previous the client was beaten up by 5 Espanics who used a club. During the fight, the client hit one of them with a bottle and knocked him out. His buddies took him away, but then came back looking for the client. They went so far as to kick the door down and come in with "claw hammers". The client said that he had no doubt in his mind that they wanted to kill him. However, the client held them at bay with a pistol.

To precisely what degree these life-threatening events had on the client's behavior when he murdered the man that had grabbed him by the throat is up for debate. However, it is hard to believe that it did not have a significant effect when he was again manhandled only a week later by the man he eventually killed in Oklahoma.

In fact, he states that he did speed every day for the 42 days from the time he escaped from the Oklahoma prison to the time he was taken into custody in Phoenix. He goes on to admit that he only slept 14 days out of the 42 he was out, which could not help but have had an effect on his behavior at the time of the commission of the present murder charge. Finally, he admits that he "snorted" amphetamine about one and one-half hours prior to the offense and estimates that he was at the "peak" of the drug effect at the time of the offense itself.

It would appear that the trigger for the client's hitting the victim, prior to his crime partner choking him to death, was the victim making homosexual advances to him and ultimately touching him and rubbing his neck. The client admits that the next thing that happened was that he had the thought to just subdue the victim, cut off his unwelcome homosexual advances, and let his partner in through the front door so that they could carry out the original plan to simply rob the victim – which he did. The client admits to one previous homosexual experience in prison in which another inmate paid him to submit to oral sex. Afterwards the client had a negative reaction as if he "felt dirty, not a right feeling." He admitted that the reaction continued to be with him, "bothering me for a while."

According to the client, after he let his partner in, the partner began kicking the victim which galvanized the victim to get up and begin struggling with the partner, even starting to get the upper hand. The client volunteers that he then put the victim in a head lock, and his partner hit him until he was unconscious. The client went back to robbing the place, his original intention, while the partner took an electric cord and began to choke him to death.

Afterwards, the client and his partner left the apartment, having obtained a payroll check and a small amount of cash.

The results from the clinical interview and psychological testing do not reveal any evidence of a major mental illness of the psychotic or bi-polar variety. In addition, there do not appear to be any indications of mental retardation or mental deficiency. Of course, there is ample evidence of the existence of the following diagnoses:

Amphetamine Dependence, Alcohol Abuse, and an Antisocial Personality.

In addition, although the client does not have any current symptoms of Post-Traumatic Stress Disorder, the existence of multiple psychic traumas in his past related to life-threatening experiences have undoubtedly played a major role in his adulthood behavior, i.e. he has learned how not to be abused by others and so is not likely to demonstrate the degree of weakness, anxiety, or depression that one would expect to see in someone who was currently suffering from the classic symptoms associated with Post-Traumatic Stress Disorder.

In general, the client does have good psychological controls and is not prone to sudden explosive behavior, regardless of whether the explosion is provoked or not. However, he has adapted to living in the sometimes violent world of a state prison and so appears, on the surface, to demonstrate less sensitivity to the needs of others than someone who had not adapted to such a life.

Conclusions: Given the above data, there would appear to be a number of mitigating factors that the sentencing authority would want to consider before pronouncing sentence, particularly a death sentence:

> The defendant had been on amphetamines for 42 straight days prior to the offense, 28 of those days going without sleep. Certainly, he was somewhat "paranoid" being on escape status, but the typical effects of continuous and prolonged abuse of amphetamines is genuine paranoia. Although not an affirmative offense of insanity, it is a factor that could have diminished the defendant's capacity to utilize good judgment, given the circumstances of the current offense.

Certainly, he did not use good judgment in the selection of his crime partner, the decision to rob the victim, and the impulse to hit the homosexual victim when he was touched in an unwelcome homosexual way.

Although the defendant could conceivably have attempted to interfere with his partner's choking the defendant, being high on amphetamines and focused on obtaining money and valuables did not allow him much time to consider that as a possibility. In addition, being on escape status from Oklahoma also acted to focus him on obtaining money and not causing potential difficulty with his partner by interfering with his behavior. Undoubtedly, such a situation also acted to prevent him from dialing 911 for help.

The client's abusive background with a drug abusing birth mother and a birth father who abused her, plus an alcoholic foster mother who slapped him as a typical form of discipline, combined with going through a number of life-threatening situations from age 13 on, even including being beaten with a club by five Espanics one week previous to committing the murder on which he was sentenced in Oklahoma, to leave the client with an extremely difficult upbringing to overcome.

In addition, there is every likelihood that the client's birth mother was abusing amphetamines when he was in her womb prior to birth. There is ample research to show that some individuals who prefer amphetamines have an excess of the nerurotransmitter, dopamine, in their brain and prefer being even more alert, fast-thinking, and "high," through the abuse of amphetamines. Although I certainly do not have lab tests showing that mother was indeed on amphetamines during pregnancy, we do have the fact that the client is excessively attracted to amphetamines as his

favorite drug of abuse. He may very well have acquired that predisposition in his mother's womb or through the simple process of inheriting it through her genetic makeup.

/s/ Mickey McMahon, Ph.D.
Mickey McMahon, Ph.D.
Clinical Psychologist

Declaration by Thomas C. Thompson

Thomas C. Thompson declares under penalty of perjury the following to be true to the best of his information and belief:

1) I am a certified psychologist licensed to practice in the State of New Mexico. A copy of my *curriculum vitae* is attached as Exhibit A. My area of specialization is Forensic and Neuropsychological Psychology. I have been qualified as an expert in other capital cases based on my credentials, experience and investigation in New Mexico, Arizona, and Texas.

2) I have been retained by counsel for Jeffrey T. Landrigan for the purpose of determining whether Mr. Landrigan suffers from a neuropsychological disturbance that produced severely disordered behavior.

3) Clinical neuropsychology is the science of the interaction between brain functioning and behavior. The neuropsychologist uses the client's historical and familial history, personality features, cognitive functioning, and evidence of brain injury or dysfunction to diagnose, explain, and treat the client's maladaptive behaviors.

4) In preparation for the clinical interviews and the neuropsychological evaluation, I had an opportunity to review material related to Mr. Landrigan and his family, supplied to me by Mr. Landrigan's counsel. I conducted extensive interviews of Mr. Landrigan, his father Darrel Hill, his adoptive sister Shannon Sumter, his ex-wife Sandra Martinez, and his biological daughter Jane Doe (a minor). In addition, I reviewed psychological, psychiatric, medical, educational, social, criminal, and family

background material related to Mr. Landrigan and his biological and adoptive families.

5) This evaluative process also included a review of the relevant literature. I surveyed the literature in the areas of forensic psychological evaluation, neuropsychological evaluation, the effect of prenatal and early postnatal experience on later cognitive and behavioral outcomes, and reviewed the behavioral genetic literature relevant to the issue of Antisocial Personality Disorder and also drug and alcohol abuse. The review focused on the literature that was available at the time of the initial psychological consultation performed on Mr. Landrigan in 1990 as well as current literature. The review highlighted the inadequate nature of the original psychological evaluation in terms of the lack of personality, cognitive, and neuropsychological data gathering. In addition, the review underscored the importance of relevant background information (particularly prenatal and early postnatal variables, family development, and behavioral genetic) in understanding and explaining Mr. Landrigan's long-standing disordered behavior. The bibliography is attached as Exhibit B.

6) On October 12 and 13, 1997, I interviewed Mr. Landrigan at the Arizona State Prison Eyman Complex SMU-II in Florence, Arizona. At that time I conducted a clinical interview.

7) On December 10, and 11, 1997, and January 30 1998, I again met with Mr. Landrigan. At those meetings, I conducted a neuropsychological examination. I performed the tests listed in Exhibit C.

8) Based on interviews, records, testing, and an extensive literature search, I was able to compile a thorough case study on Mr. Landrigan.

1990 psychological impressions.

9) As part of the case study, I also reviewed a document, dated July 15, 1990, prepared by Mickey McMahon, Ph.D., entitled "psychological evaluation." I had an opportunity to interview Dr. McMahon, who is a clinical psychologist.

10) In 1990, Mr. Landrigan's trial attorney asked Dr. McMahon to meet with his client and give the attorney his "impressions" of Mr. Landrigan. At the direction of the attorney, Dr. McMahon prepared a "psychological report" based on his brief interview with Mr. Landrigan. It is, in fact, a summary of his findings but would not be considered an adequate psychological evaluation. A copy that report is appended to my declaration at Exhibit D.

11) An analysis of the original document prepared by Dr. McMahon shows a significant number of glaring deficiencies by the standards recognized by forensic psychologists at that time. The document and procedures used fell short of a comprehensive evaluation and were inadequate to address the issues of mitigation.

12) The standard of practice in the area of forensic evaluation by a psychologist is governed by the American Psychological Association's principles of ethical conduct. Those areas relevant to the performance of forensic psychological evaluations include the following:

a) That psychologists base their forensic work on appropriate knowledge of and confidence in

areas underlying such work, which includes specialized knowledge concerning special populations.

b) That psychologists practicing in this area provide written or oral reports concerning the psychological characteristics of an individual only after they have conducted an examination of the individual adequate to support their statements or conclusions.

c) That psychologists maintain a reasonable level of awareness of current scientific and professional information as it relates to activities within their practice and that they undertake ongoing efforts to maintain competency in these areas. Further, psychologists must rely on scientifically derived knowledge and maintain an adequate level of awareness of relevant scientific and professional information related to the services they render, making appropriate use of scientific and professional resources to do so.

d) That psychologists, when performing evaluations using limited data, explain in the report, verbal communication and/or testimony the limited nature of the evaluation and its effects on the reliability and validity of their conclusions.

13) Dr. McMahon did not conduct a thorough psychological evaluation of Mr. Landrigan. As a result, his "impressions" and the prepared document did not meet the standards of practice for a comprehensive forensic psychological and neuropsychological evaluation and would not have been useful in the matter of sentencing.

14) Dr. McMahon reviewed only two documents. One was a report from the Phoenix Police Department, and it was externally generated with regard to information

relevant to the crime. The second document appears to be a questionnaire prepared by an unidentified individual. No other sources of background information were consulted, other than Mr. Landrigan.

15) Dr. McMahon administered only the Rorschach Inkblot Technique and the Williamson Sentence Completion Test, both of which are considered primarily personality measures and not adequate tests to address the issues relevant to the sentencing hearing. Consequently, Dr. McMahon was unable to generate adequate data to meet the standards necessary for the evaluation of Mr. Landrigan.

16) The standard of practice for a forensic psychological evaluation at that time and currently, particularly in a death-penalty sentencing/mitigation evaluation, dictates the gathering of a wide range of background information. The information should include details about the commission of the crime, but also about Mr. Landrigan's birth and his developmental, familial, educational, social, medical, cognitive, and substance-abuse history. In addition, it is not sufficient to derive this information solely from Mr. Landrigan. The standard of practice recommends that collateral and corroborative information be gathered from accessible parties, including family members, teachers, prior counselors, psychologists, physicians, and other individuals, who have intimate and relevant knowledge of Mr. Landrigan. This information is traditionally gathered during personal interviews or from appropriate records. At the very least, an evaluation of this nature and in this situation should have included a more thorough history from multiple sources, a relevant family history of both the biological and the adoptive

family, and an overview of previous psychological, psychiatric, and medical records.

17) In 1990, when Dr. McMahon conducted his interview, a comprehensive forensic psychological evaluation should have included a Halstead-Reitan Neuropsychological Battery, which was readily available and widely used (Reitan and Wolfson, 1985, 1986, 1986b, Grant and Adams, 1986 and Lezak, 1976, 1983). In addition, the majority of other neuropsychological instruments, used to augment the Halstead-Reitan Neuropsychological Battery in the 1997-98 evaluation, were also available at the time of the 1990 evaluation (Lezak 1976, 1983).

18) For purposes of a psychological report, testing relevant to the issues of personality and adaptive functioning should have been empirically based, as opposed to a mere impressionistic evaluation. Objective interpretation of the Rorschach Inkblot Technique, as a valid measure of personality, was already well established and standardized in Exner's work (1974, 1978, 1986), thus eliminating the need for subjective interpretations. In addition, the Minnesota Multiphasic Personality Inventory (MMPI) originally developed in the 1940's, had already emerged as the most widely used and thoroughly researched personality instrument available. It, too, was readily available in 1990 and easily administered. Abundant sources, including Dahlstrom, Welsh, and Dahlstrom (1972, 1975), and Greene (1980) documented almost 6,000 clinical and research applications of the MMPI; therefore, interpretation of test results using the MMPI-I or MMPI-II were highly standardized. Furthermore, by 1990 Millon (1977, 1987a, 1987b) had developed the Millon Clinical Multiaxial Inventories, which were also widely available, reliable, and valid

personality measures and were far more empirically based than any impression-based evaluation could be.

19) At the time of the 1990 interview, Dr. McMahon was asked by Mr. Landrigan's attorney to only provide his impressions, which he thought was an unusual request based on his previous forensic experiences. Later, given the initial instructions, Dr. McMahon was surprised when the attorneys wanted a report. Dr. McMahon, himself, felt there was an excessive number of questions about Mr. Landrigan that could not be addressed based solely on information gathered during a brief consultation. Summarily, Dr. McMahon described his experience working with Mr. Landrigan's attorney as the "worst experience" he had ever had working with an attorney. He characterized the attorney's request for a psychological evaluation as if the attorney was robotically going through a "to-be-checked-off list."

20) Consequently, the document prepared by Dr. McMahon contained many shortcomings for a forensic evaluation and was inadequate to address mitigating factors prior to the imposition of the death penalty.

1997 – 1998 case study.

21) As part of the case study, commenced in 1997 and completed in 1998, I conducted a comprehensive neuropsychological, developmental, and behavioral evaluation. The vast quantities of relevant data and the significant results of this evaluation, as well as the pertinent literature research, could have been gathered in 1990 and presented at that time as mitigating factors in Mr. Landrigan's sentencing hearing.

22) In order to have an understanding of Mr. Landrigan, it is imperative to look to his family history and background. Mr. Landrigan has two families: his birth family, the Hills; and his adoptive family, the Landrigans. To better understand the backgrounds of the families, I have included a genogram for the Hill Family, Exhibit E; and a genogram for the Landrigan family. Exhibit F.[1] The significant behaviors and disorders for relevant family members are noted.[2]

Family Background and History

23) Many members of the biological father's family display behaviors that are disordered.[3] Mr. Landrigan's biological grandfather abandoned his family, abused drugs and alcohol, engaged in criminal behavior, and was eventually killed by the Tulsa police. His biological grandmother manifested attachment difficulties. She gave birth to three children out of wedlock, all of whom were given up for adoption. Mr. Landrigan's paternal uncle has a history of disordered behavior characterized by alcohol and substance abuse as well as a long-standing pattern of criminal behavior. He is currently incarcerated in a federal penitentiary . Mr. Landrigan's biological father demonstrated a pattern of early behavioral disturbances

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[1] A legend for understanding the genogram is attached at Exhibit G.

[2] In the event a disorder or behavior is not noted, it does not mean that the individual does not possess the traits identified. I chose to focus on certain individuals so that the genogram will be more clear. The disorders and behaviors are briefly summarized in Exhibit H.

[3] The summaries provided in my declaration are based upon records I reviewed, interviews I conducted and declarations that I have read.

characterized by shallow relationships, alcohol and substance abuse, and criminal behavior, including violence. He is currently on death row in the state of Arkansas. Had Mr. Landrigan been raised in this family, his own behavioral pattern might have been attributed to social learning; however, Mr. Landrigan never knew the members of this family. Nevertheless, he inherited the genetic predisposition for disordered behavior from his biological family. *See* Exhibit E.

24) Mr. Landrigan's biological mother also manifested a pattern of disordered behavior characterized by alcohol and substance abuse, criminal behavior, and abandonment of Mr. Landrigan at the age of six months, when she left him in a day nursery and never returned. Mr. Landrigan's mother, herself, was orphaned as a young child after the death of her mother. Her father married five times and her oldest brother, at the time of her placement in an orphanage, was already in a juvenile detention facility. *See* Exhibit E.

25) The relationship between Mr. Landrigan's biological parents was marked by alcohol and drug abuse and mutually disordered behavior. During his mother's pregnancy, she used alcohol and amphetamines. After giving birth, she exhibited inadequate maternal attachment, frequently leaving other family members to provide his early postnatal care. Finally, she abandoned Mr. Landrigan at six months in a day nursery in Tulsa, and eventually she relinquished custody of Mr. Landrigan to the state of Oklahoma.

The Landrigans.

26) Mr. Landrigan's adoptive family knew nothing of his background but, his adoptive sister noted, his behavior never seemed to fit into the family. Furthermore, his early attachment difficulties were amplified in his adoptive family as a result of the adoptive mother's affective disturbances and chronic alcoholism. Mr. Landrigan never responded to discipline and social teaching within the family. His behavior became increasingly disordered as he emerged into adolescence and adulthood. According to his adoptive sister, Mr. Landrigan never developed any attachment as a child and manifested a superficial self-centered relationship which became more evident with each passing year. Mr. Landrigan's behavior significantly changed the family dynamic for the worse. His behavior probably interacted with his adoptive mother's personality in such a way as to severely exacerbate her problems with alcohol and depression. He began getting into trouble and using alcohol and drugs at an early age and, by adolescence, he had begun a series of placements in juvenile detention facilities, a psychiatric ward, and twice in drug abuse rehabilitation programs. Finally, as a young adult, he was incarcerated in Oklahoma for murder. His sister noted and the records confirm that Mr. Landrigan was unable to learn from his behaviors and failed to anticipate or respond to consequences. *See* Exhibit F.

Neuropsychological and personality testing

27) The results of the neuropsychological evaluation that I conducted reflect an individual who shows poor language-based learning with difficulties in the way in which verbal material is organized, retrieved, and stored.

the auditory verbal learning tests, verbal memory tests and significant differences between verbal and nonverbal/visual memory.

28) I also noted that Mr. Landrigan's motor functioning was consistent with difficulties in the anterior dominant (left) language hemisphere, further supporting the hypothesis of a dysfunction of this area of the brain. In addition, one also notes a lack of strategy across many of the tests that were administered. This is especially true on the Category Test, where Mr. Landrigan's performance was in the impaired range suggesting difficulties in reasoning, ability to profit from feedback and problems in hypothesis testing. What this means is Mr. Landrigan has difficulties in reasoning, forming useable strategies, and profiting from feedback. Because of the brain dysfunction, Mr. Landrigan has deficits in the way that he functions in situations requiring him to organize his behavior in a more routine fashion.

29) The results of the personality testing are consistent with the noted neuropsychological difficulties. The testing reveals an individual with significant long standing personality problems that are manifest in deficits with cognitive processing, poor adaptability, incomplete understanding of his surroundings and his effect on others, and very limited impulse control. As a result he engages in behavior in a more inflexible fashion and he fails to apply experiences from past situations to new situations. Mr. Landrigan's evaluation indicates that he is suffering from an Antisocial Personality Disorder.

30) Antisocial Personality Disorder, according to the DSM-IV, is characterized by a pervasive pattern of violations of the rights of others, beginning before age 15. It

must be distinguished from criminal behavior undertaken for gain that is not accompanied by the personality features characteristic of this disorder. These characteristics are seen in a pattern of shallow interpersonal relationships, lack of interpersonal connectedness, being deceitful, consistently irresponsible across areas of their daily lives with decisions characterized by impulsivity and a failure to plan ahead. The decisions that are made by these individuals occur on the spur of the moment without forethought, or anticipation of consequences to self or others. Antisocial Personality Disorder is more common among the first-degree biological relatives of those with the disorder that among the general population. Biological relatives of individuals with this disorder are also at increased risk for substance abuse related disorders, particularly in males. Adopted-away children resemble their biological parents more than their adoptive parents but the adoptive family environment influences the risk of developing a personality disorder and related psychopathology.

31) These behaviors are consistent with evidence from scientific literature concerning the way in which individuals with Antisocial Personality Disorder ("APD") process emotional and linguistic information. Studies involving sophisticated neuroimaging (EEG, MRI, SPECT, and PET scans) and neuropsychological testing have revealed that these individuals show alterations in both brain structure and functioning. They simply do not process information in the way others do. They lack the ability to respond to the environment in a normal fashion. They are less sensitive to both physical and emotional signals. Therefore, individuals with APD do not adequately profit from punishment and feedback alone.

32) Williams, *et al.* (1991) and Kiehl, *et al.* (in press) found significant differences between normal control subjects and APD subjects using electroencephalographic(EEG) recordings. When faced with emotion-laden words, APD subjects displayed lower physiological responsivity and less verbal comprehension than did normal subjects. These findings were further demonstrated by Intrator, *et al.* (1997) in a study using single positron emission computerized tomography (SPECT). In this study, the brain activities of normal subjects were compared with those of APD individuals, while each were engaged in reading emotion burdened materials. The authors uncovered significant abnormalities in those areas of the brain implicated in verbal and emotional processing in APD individuals. Hare (1998), using functional magnetic resonance imaging (fMRI), reported that APD individuals show much greater cortical activity than normals when trying to comprehend the emotional content if verbal materials. He concluded that these findings reveal a biological deficit.

33) Utilizing positron emission tomography (PET) evaluation of central nervous system glucose metabolism, Raine, *et al.* (1994)(1998) found significantly reduced activity in several areas of the prefrontal cortex in murderers relative to control subjects. These findings are consistent with those of Lapierre, *et al.* (1995) on APD subjects. These researchers found similar areas of lowered brain activity as measured by SPECT neuroimaging and confirmed with neuropsychological testing.

34) Other studies (Arnett, *et al.* 1993; Ogloff and Wong, 1990; Raines and Venables, 1988; Patrick, 1994; and Patrick, *et al.* 1993) of psychophysiologic patterns of arousal have shown marked differences between APD and

normal individuals. These studies reveal lower levels of arousal which result in biological deficits in these individuals These deficits alter emotional arousal and interfere with normal learning. Consequently, these affected individuals are particularly slow to learn from punishment or past experiences.

35) Damasio, *et al.* (1991) noted their research findings strongly support a biological developmental condition among APD individuals in which behavioral deficits are due to a dysfunction of specific regions of the nervous system. Their findings are confirmed by data from studies similar to those noted above. Certainly, research by Patrick (1994), Patrick, *et al.* (1993), and Raine, *et al.* (1990) strongly supports these findings. These researchers were able to demonstrate that psychophysiologic measures, (*i.e.*, electrodermal, cardiovascular and cortical measures), taken at age 15, could correctly predict which individuals would develop APD nine years later, by age 24.

36) These findings are consistent with the interpretation of the relevant literature concerning neuropsychological/neurobehavioral dysfunction and APD by Thompson (1997). The literature supports a pattern in APD that is consistent, behaviorally, with a biological disturbance in prefrontal cortical/subcortical functioning.

37) The neurobehavioral pattern that emerges is characterized by deficits in behavioral inhibition, inability to learn using negative feedback/aversive consequences, failure to learn from experience, the absence of realistic long-term goals, and inappropriate/defective affective language processing. Consequently, these individuals are unable to learn from past experiences, anticipate future consequences, or generalize their experiences into an

organized body of knowledge that can serve to guide their behavior in an adaptive fashion. Although appearing intellectually normal, these individuals process information in an incomplete manner that results in a life long history of disturbed behavior.

38) The result is an individual whose functioning appears to be solely bound by the present circumstances in which they find themselves with no reflection on the past nor anticipation of future consequences.

39) After conducting the above described interviews and assessment measures, examining records, and reviewing the family history of the Hills and the Landrigans, I determined that four areas of inquiry are particularly relevant in understanding Mr. Landrigan's behavior and aberrant brain functioning: the behavioral genetics of temperament and personality; the effects of prenatal exposure to alcohol and amphetamines (*i.e.*, Fetal Alcohol Syndrome); the developmental consequences of the disruption of early maternal attachment and subsequent abandonment; and assortative mating (the concentration of disordered and antisocial traits in subsequent generations).

Genetic determinants of behavior.

40) I focused on these areas because Mr. Landrigan's family background is replete with individuals with seriously disordered behavior including, among others, a father who has been paranoid, violent, addicted to alcohol and amphetamines, and whose personal life history is marked by early and continuous episodes of disordered behavior and failures in adaptive functioning. *See* Exhibit E. Additionally, Mr. Landrigan was exposed to alcohol in

his mother's womb as a result of his mother's daily alcohol consumption during her pregnancy. Shortly after Mr. Landrigan's birth, his biological mother abandoned him and he was then placed for adoption. From a very early age with the adoptive family, Mr. Landrigan exhibited behaviors that were indicative of failures to develop attachments, poor social adjustment, an inability to anticipate consequences, failure to learn from experience, along with a pattern of impulsive and self defeating behaviors, including significant addiction to amphetamines and cocaine. He has been unable to develop adaptive social behaviors throughout his life.

41) At the time of the psychological evaluation in 1990, there were a large number of well-organized studies using the adoption model. In an adoption study, an individual is separated from his biological family and his behaviors are evaluated for greater similarities to the biological or adoptive family in order to differentiate genetic contributions from imitative behavior. Cloninger, *et al.* (1981), Cloninger, *et al.* (1986) and Cadoret, *et al.* (1980) and a review of the more recent literature by Anthenelli and Schuckit (1997); all support the role of genetic factors in alcohol abuse. Based on a review of brain reward mechanisms by Gardner (1997), a similar pattern of genetic predisposition is found for other types of substance abuse. An examination of the genogram of Mr. Landrigan's biological family, *see* Exhibit E, reflects an extremely widespread and prevalent pattern of alcohol and substance abuse.

42) Other well organized studies in the area of genetics, crime, and antisocial personality disorder provide significant support for the role of genetics. These studies, which were conducted in the United States as well as

Denmark and Sweden, (*i.e.*, Cadoret *et al.* (1983); Cadoret *et al.* (1985); Cadoret *et al.* (1987); Mednick *et al.* (1984); Moffitt (1987); Mason and Frick (1994); Miles and Carey (1997); Eaves, *et al.* (1997); and McGue and Buchard (1998)), support genetic pre-disposition as a variable in criminal behavior. The studies examined children who had been adopted and, therefore, were not exposed to their biological parents who, themselves, had a history of criminality. The findings of these studies support previous evidence gathered in twin studies showing a significant correlation between biological relatives regardless of their exposure to one another. As with the variable of alcohol and drug abuse, an examination of the genogram from Mr. Landrigan's biological family shows a significant genetic loading for Antisocial Personality Disorder. *See* Exhibit E.

Pre-natal development and damage.

43) Mr. Landrigan's biological mother used alcohol, amphetamines and amphetamine-derivative inhalants during her pregnancy. The biological mother's behavior during her pregnancy influenced Mr. Landrigan's later neurocognitive development. As noted in Reynolds and Fletcher-Jansen (1989), the formation of higher cortical processes begins in very early development. Damaged development is characterized by unmatured neural organization and poor patterns of myelination within the brain. A number of variables, including timing, nutrition, environment, teratogenicity (*i.e.* alcohol, drugs), and genetics affect brain development.

44) The effects of *in utero* exposure to drugs, alcohol, and other teratogenic substances on the central nervous system was already well-known in 1990. These teratogenic

agents have been linked to a number of both subtle and obvious physical, cognitive, behavioral, and emotional sequelae. Streissguth, *et al.* (1989) studied 500 children, 92 of whom had been prenatally exposed to alcohol. They concluded that the effects of even moderate exposure to alcohol could be distinguished in the very first phase of life and continued to exert negative influences throughout development.

45) Relevant literature concerning the use of stimulants during pregnancy (Middaugh, 1989, Oro and Dixon, 1987, Eriksson, *et al.* 1978, Eriksson, *et al.* 1981 and Finnegan and Kandall, 1997) reveals findings consistent with neurochemical changes in the brain. These changes are further exacerbated by reduced prenatal care and result in increased incidents of low birth weight, neurological abnormalities, and long-term aggressive behavior and other problems in adjustment and adaptation.

46) Although Mr. Landrigan does not manifest the obvious external features associated with Fetal Alcohol Syndrome (FAS), current research by Mattson, *et al.* (1998) demonstrates that prenatal alcohol exposure is related to a consistent pattern of neuropsychological deficits, regardless of the presence or absence of the physical features of FAS.

47) Specifically, as revealed in interviews with Mr. Landrigan's adoptive sister, Ms. Shannon Sumter, a graduate nurse, she noted that her brother's behavior fit the pattern of deficits associated with this disorder. Many of these deficits relate to the ability to plan, control, and when necessary inhibit behavior. As such, they are clearly relevant to understanding Mr. Landrigan's condition.

Post-natal and early development.

48) At the age of six months, Mr. Landrigan was abandoned by his biological mother in a day nursery. Prior to that time, Mr. Landrigan had experienced a variety of care givers as he was shuffled around within the extended family. When the State of Oklahoma took custody of Mr. Landrigan, he continued to experience an unstable environment and changing care givers as he moved through foster placements and eventual adoption.

49) Attachment is a key variable in the majority of acceptable theories of developmental psychopathology. Attachment is an important variable in cognitive, social, emotional, and personality development. Information about Mr. Landrigan's early childhood, gained from extensive, in-depth interviews with Ms. Shannon Sumter, Mr. Landrigan's adoptive sister, along with extensive clinical interviews with Mr. Landrigan, is consistent with an individual who failed to show the ability to bond or develop significant, normal emotional attachments. These difficulties were obvious at an early age and continued to be amplified as Mr. Landrigan matured. Corroborative information from Mr. Landrigan's ex-wife, Ms. Sandy Martinez, confirms that Mr. Landrigan always lacked depth of emotional attachment and connectedness. Raine, *et al.* (1997), noted that *in utero* complications and maternal rejection are significant factors in the more serious forms of violent behavior, particularly where this behavioral disruption is characterized by early onset. In addition, being raised in a public institution beginning during the first year of life is a key factor in maladjustment. All of these factors are developmental variables which impacted Mr. Landrigan and were known prior to 1990.

50) Interviews with family members, such as the adoptive sister, as well as the adoptive mother and father, both of whom were alive in 1989 and 1990, would have revealed a history characterized by difficulties in the maternal-child relationship. Interviews with Ms. Sumter, Mr. Landrigan's adoptive sister, revealed a pattern of interactions between Mr. Landrigan and his adoptive mother, during which his diminished capacity for bonding/connectedness and disordered behavior interacted with her temperament and personality in a negatively reinforcing fashion. These difficulties became quite severe over time as the adoptive mother's alcoholism progressed to the point where she died of complications associated with alcoholism. *See* Exhibit F.

51) The significance of this developmental history is supported by the work of Rowe (1994) and Xiaojia, *et al.* (1996). This research sustains the concept of an active genotype-environmental interaction in which individuals largely mediate the response of the environment to themselves based on their behavior. Xiaojia, *et al.* (1994) found that psychiatric disorders of biological parents are significantly related to and inducing of children's antisocial/hostile behaviors. In essence the resulting interaction between Mr. Landrigan and his adoptive mother became a mutually negatively reinforcing relationship which served to amplify the disordered behavior of both and left no possibility for any amelioration of Mr Landrigan's personality.

Assortative mating.

52) The variable of assortative mating, *i.e.*, nonrandom mating (Krueger, *et al.* 1998) is extremely relevant

and easily observable in Mr. Landrigan's biological family. In essence, assortative mating means certain individuals become attracted to one another based upon mutual behaviors. This attraction results in a non-random pattern of mating. The data from Krueger, *et al.* (1998) strongly supports the role of assortative mating in antisocial behaviors. This pattern is well-known to psychologists working with individuals with Antisocial Personality Disorder and their families. The effects of this concentration can be observed in the Landrigan biological family. Many members of the family possessed similar behavioral traits, marked by poor inhibition, hyperactivity, alcoholism, drug abuse, and antisocial behaviors. *See* Exhibit E.

53) The pattern is also evident in Mr. Landrigan's ex-wife as well as in their biological daughter, who, at the age of 15, has already been placed in a treatment program for behaviorally disordered adolescents. Based on interviews, behavior evaluations, and psychological testing of the daughter by program personnel, she presents with problems of substance abuse, disordered behavior, and the beginnings of criminal activity. *See* Exhibit E.

54) The concentrating effects of assortative mating appear so strong that Mr. Landrigan's adoptive family, which was more supportive and emotionally benign, had little, if any, effect on the defendant and his developmental outcome. This nurturing limitation is well supported and argued by Rowe (1994) in his book THE LIMITS OF FAMILY INFLUENCE.

Conclusion

55) These data taken together suggest an individual whose behavior was disordered early in life as a result of

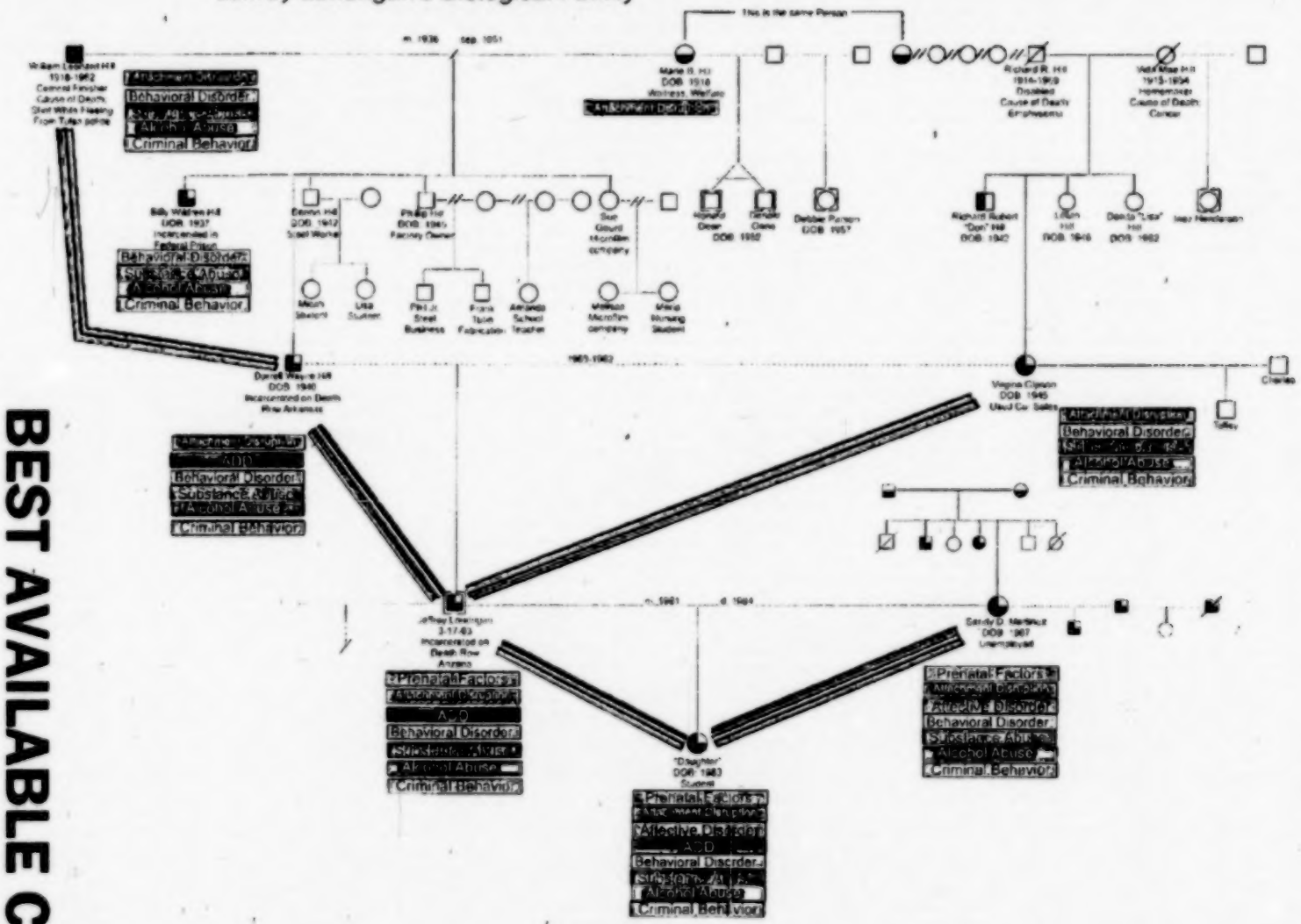
genetic predisposition, *in utero* teratogenic substances, early maternal rejection, and a negatively reinforcing mother-child relationship arising from a troubled genotype-environmental interaction in the adoptive family. The extent of this disordered behavior was subsequently beyond the control of Mr. Landrigan. His actions did not constitute a lifestyle choice in the sense of an individual operating with a large degree of freedom, as we have come to define free will. The inherited, prenatal, and early developmental factors severely impaired Mr. Landrigan's ability to function in a society that expects individuals to operate in an organized and adaptive manner, taking into account the actions and consequences of their behaviors and their impact on society and its individual members. Based on evaluation and investigation along with other relevant data, this type of responsible functioning is simply beyond Mr. Landrigan and, as far back as one can go, there is no indication that he ever had these capacities.

I declare under penalty of perjury that the foregoing is true and correct.

Signed this 6th day of November, 1998 at Las Cruces, New Mexico.

/s/ Thomas C. Thompson
Thomas C. Thompson

Jeffrey Landrigan's Biological Family



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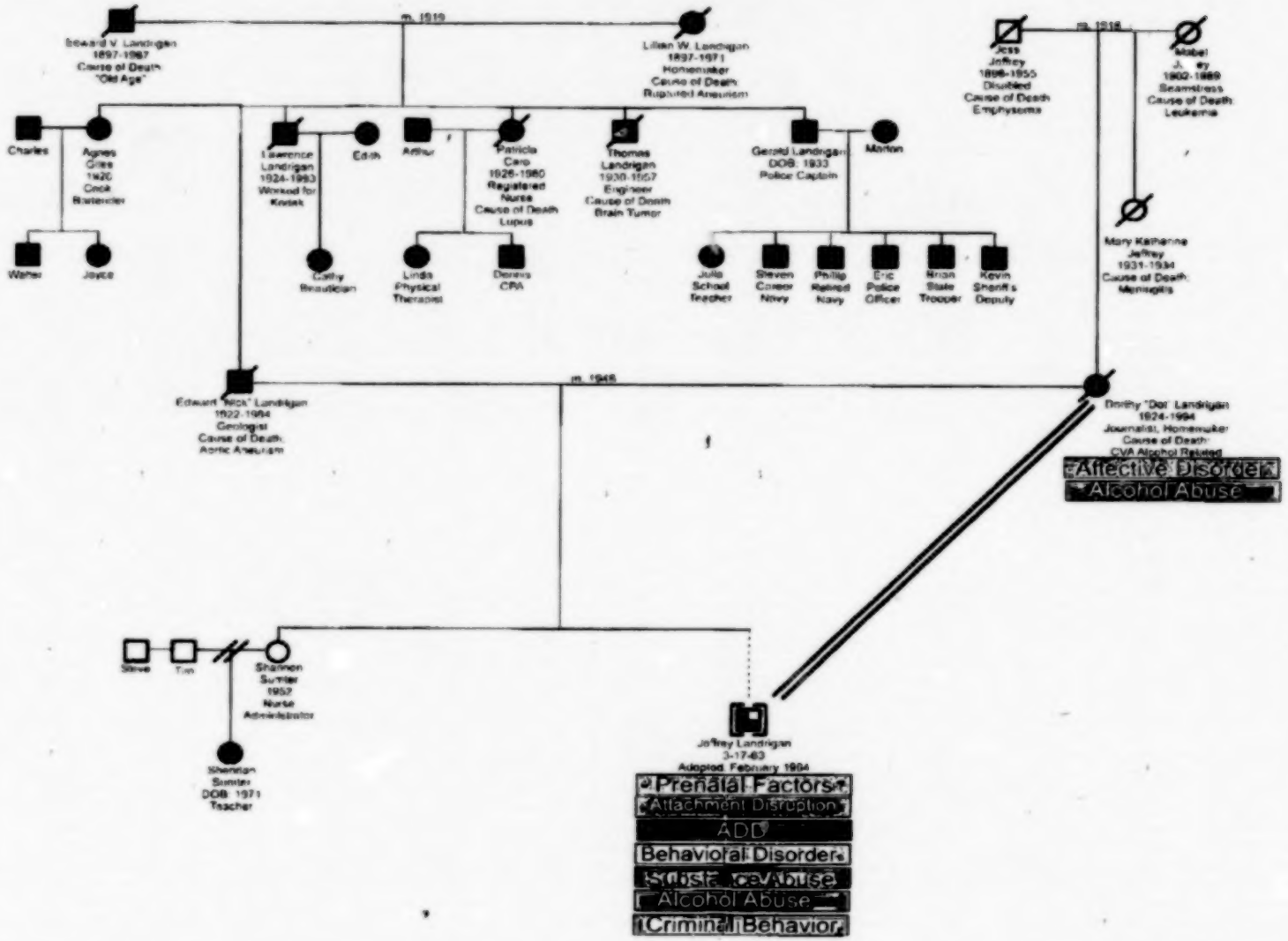
Jeffrey Landrigan's Adoptive Family



Declaration by Lisa Eager

I, Lisa Eager declare under penalty of perjury the following to be true to the best of my information and belief:

1. My name is Lisa Eager and I am an investigator with the Office of the Federal Public Defender. I am assigned to the Capital Habeas Unit in Phoenix, Arizona. I am the investigator assigned to the Jeffrey Landrigan case.

2. During my investigation in the Landrigan case, I met and interviewed Mr. Landrigan's biological mother, Virginia Gipson (f.k.a. Letha Virginia Hill), in Hot Springs, Arkansas. I interviewed Virginia on June 11, 1997; July 11, 1997; September 4, 1997, and August 9, 1998.

3. Virginia stated that her parents were Vida and Richard Hill. Her paternal grandfather, Napoleon Bonaparte Hill, was 3/4 Native American and a member of the Cherokee Nation. The Cherokee part of the family was from Oilton and Muskogee. He was married to Richard's mother, Emma Mitton Hill. She was Irish. Virginia said that her mother was married to someone else, name unknown, before she married Richard. Inez Henderson was her half-sister from her mother's first marriage but Virginia has no contact with her.

4. Virginia said that she was nine years old when her mother died from cancer. After her mother's death, the entire family drove out to Bakersfield, California, to live with Richard Hill's sister, Mildred Jones. Virginia said that her father took all of the money that he'd received after his wife's death to California and paid for his sister's house. He thought that if he helped his sister that she

would in turn help them. Richard Hill thought that he and his family could all live with his sister and her family. Mildred Jones had five children and a disabled husband. Mildred did not want Richard and his family to live with her. A few months after going to Bakersfield, Richard and his family returned to Tulsa on the train.

5. Virginia said that her father tried to raise his children on his own when they returned to Oklahoma. Richard Hill applied for welfare. Richard Hill's health was poor and their family doctor, Dr. Robert Rupp, thought that Richard had only six months to live. Social Services suggested taking Virginia and her sisters to live someplace else, someplace where they would be busy. Virginia and her sisters were sent to live at the Charles Page Orphanage in Sand Springs, Oklahoma. Virginia said that it was a large orphanage and indeed, they were busy. The orphanage had farms that the children worked on in order to earn their way. Virginia's brother, Don, was not sent to the orphanage. He was allowed to live at home initially and was later placed in a correctional facility.

6. Virginia said that while she lived at the Sand Springs Orphanage she was able to see her sister Jeanne but that they lived on different floors. Virginia and Jeanne were not allowed to see their youngest sister, Lisa, because she lived in the little girls' section of the orphanage.

7. Virginia said that she attended Charles Page High School in Sand Springs but did not graduate. When Virginia was in the eleventh grade she still could not read well. When she was with Darrel Hill, he taught her to read.

8. Virginia said that her father, Richard, remarried at least four times after her mother died in an attempt to

find a step-mother for his children. The first marriage only lasted around three months before they divorced. The second marriage was to a woman in Arkansas and was also short-lived.

9. Virginia reported that when she was a teenager her father married Marie Hill. Richard and Marie were married to each other more than once. Marie Hill became like a mother to Virginia. Marie had several miscarriages and she also gave up three children for adoption. A family friend, Josephine, adopted Marie's daughter, Debbie. The other two children that were given up for adoption were twins.

10. Virginia became better acquainted with Marie Hill's son, Darrel, after her father and Marie were already married. Shortly after Darrel was released from the Oklahoma state prison, he raped Virginia. Virginia told Marie what happened and as a result, Virginia's father and Marie split up for several months. It was not until approximately four months later that Virginia saw Darrel again.

11. Virginia next saw Darrel Hill at her fifteenth birthday party at Marie Hill's house. Richard and Marie were still spending time together even though they had split up. Darrel gave Virginia a dress for her birthday and told her that he was going to take her to Miami, Oklahoma, to marry her.

12. Virginia said that she ran away from the orphanage in Sand Springs to marry Darrel Hill. They were married in Miami, Oklahoma. During the time that they were together, Darrel did not work. Virginia reported that Darrel stole cars and robbed safes instead of working. He also drank whisky with beer chasers and used speed.

Virginia said that Darrel also used a speed-like drug called Valo. The first time Virginia saw Darrel shooting up, they were already married. Virginia's father wanted to have their marriage annulled after that but Darrel threatened to kill him so he did not pursue the annulment.

13. Virginia said that Valo was a nasal inhaler that Darrel, his friends and she used. They opened the inhaler to get to the cotton inside. The cotton had an oily substance in it that they cooked and injected. Virginia said that she always wears long sleeves now to cover up the scars from track marks that she has on her arms.

14. Virginia said that the first time she drank moonshine was when she found it in a jelly jar inside their mailbox. She found moonshine like this more than once and each time that she found it she drank the whole thing.

15. Virginia said that she got pregnant with Billy about six months after she married Darrel. Virginia admitted that during the time that she was pregnant that she drank alcohol on a daily basis. She drank hard liquor – whiskey and moonshine – which she would sneak from Darrel.

16. When Billy was one month old, Darrel and Virginia lived in an apartment for about a month. An incident occurred in which Darrel loudly told Virginia that he had a lady friend and that he was taking Billy. Darrel acted crazily and severely beat Virginia. Darrel then locked Virginia in a closet and refused to let her out. Darrel left the apartment after the landlord came in and said that he had called the police. Virginia stated that the landlord let her out of the closet. When Darrel returned to the apartment later that night, he passed out.

17. In the past, Virginia's mother-in-law/step-mother, Marie Hill, had told her if Darrel ever beat her that she should roll him up in a blanket and beat him with a skillet or a bat. Virginia reported that on that night she rolled Darrel up in a blanket and beat him as Marie had instructed. She stayed up all night crying and her mother-in-law/step-mother, Marie Hill, picked her up the next day. Marie was proud that Virginia had used her idea.

18. Virginia said that Darrel had been physically abusive to her at other times as well. He once held a gun to her head until she passed out. On another occasion, he hit her in the mouth.

19. Virginia said that when Billy was a few months old that Darrel went back to prison. Virginia lived with Darrel's mother, Marie, some of this time. To the best of Virginia's recollection, she kept Billy for two months and then gave him to her Aunt Delta and her husband, Bill, because Virginia knew that she couldn't raise Billy. Billy had double pneumonia and was colicky. He was very sickly the whole time that she had him and she could not afford to pay for the medical attention that he needed. At that time she had been staying with her paternal grandmother, Grandma Hill, for only a few days when Grandma Hill kicked her out. Virginia said that when she asked Darrel's parents for help with the baby that they left town. Virginia said that her Aunt Delta had Billy for two months before someone called Social Services and said that the baby was not hers. They took the baby away from her.

20. When Social Services took Billy away, Virginia stated that she met with a Judge Young in Tulsa, Oklahoma, to discuss the situation. Virginia stated that she did not want to give Billy up but she was told by Judge Young

that she was not a good mother, that she was only seventeen years old, and that they had a couple who wanted a baby and were willing to pay $10,000 if she signed her baby over. Virginia reported that Judge Young stated she had already spoken to Virginia's father about the arrangement. Virginia stated that she did not want to give up her baby but that she was told she had no rights. She reportedly asked Darrel's family for help but they left town.

21. Virginia said that the Social Services worker that handled the adoption was Harold Arrowood. She said that she ultimately agreed to give Billy up for adoption but that her family never saw any of the $10,000. Virginia said that she'd heard that Harold Arrowood attended a lot of cocktail parties that Nick and Dot Landrigan threw at their home. Virginia further stated that years later when she spoke to Nick Landrigan that he admitted this to her and said that Harold Arrowood had been an acquaintance of theirs.

22. Virginia said that she spent seven years in a fog, abusing drugs and alcohol. She used speed and then yellow jackets to bring her down.

23. Virginia said that when she met her current husband, Charlie, they moved to Arkansas in 1972. Virginia and Charlie worked at National car rentals. Virginia said that they dated for a year and split up. When Virginia found out that she was pregnant, they got back together and moved to Indiana. When her son Tolly was eight months old, Virginia and Charlie moved out to Arizona. Charlie opened his own auto garage.

24. Virginia said that after she gave Billy up for adoption that she did not have any contact with him until

1988. She was living in Yuma, Arizona, at the time. Virginia said that she received a telephone call from Darrel's sister, Sue Gourd. Mrs. Gourd said that Billy was going to call her. Virginia said that around one hour later she did receive a call from Billy. He introduced himself to her as Jeff Landrigan and explained to her that he located her because a man in prison named Tommy Owens walked up to him and asked him if he was Darrel Hill's son. Virginia said that she grew up with Tommy Owens and they talked from time to time after that. Virginia said that she eventually went out to Oklahoma and met Jeff while he was in prison in Hominy, Oklahoma.

25. Virginia said that Jeff told her when they spoke that he had been able to do whatever he wanted growing up, including drinking alcohol.

26. Virginia said that Jeff telephoned her when he escaped from prison in Oklahoma. She reported that she felt torn because she wanted to help him but she also wanted to turn him in. She said that she did not see Jeff until he was in custody in Phoenix, Arizona. Virginia saw Jeff before and after his trial in Phoenix.

27. Virginia said that she was contacted several times by Jeff's trial attorney, Dennis Farrell. She said that there seemed to be a communication problem with Jeff and Mr. Farrell. Mr. Farrell acted like Jeff's case was cut and dry. When Virginia was contacted by Mr. Farrell she was never asked any questions regarding their family history. Virginia said that she spent a total of about two hours with Dennis Farrell. She said that she was never interviewed by any investigators before the trial.

28. Virginia said that she was never contacted by attorneys or investigators appointed to represent her son

on direct appeal or in post-conviction proceedings. She said that had any attorney or investigator contacted her, she would have disclosed the information stated in this declaration, as well as other information.

I declare under penalty of perjury that the foregoing is true and correct.

Dated this 16th day of November, 1998.

/s/ Lisa M. Eager
Lisa M. Eager

Declaration by Philip Hill

I, Philip Hill declare under penalty of perjury the following to be true to the best of my information and belief:

1. My name is Philip Hill and I am the brother of Darrel Hill, Jeffrey Landrigan's biological father. Presently, I reside in Jennings, Oklahoma.

2. When I grew up my family lived between Tulsa and Sand Springs, on the Sand Springs line. My parents were William Leonard Hill and Alta Marie Baker Hill.

3. My father abandoned our family when I was very young and my mom raised us on her own. She tried to work as a waitress but with five children she could not make ends meet. She received a welfare check and we children would mow lawns and do other odd jobs to earn money to help out. It was a rough existence and we were very poor. We grew a garden and raised chickens and rabbits for food.

4. My father, William Leonard Hill, abandoned our family when I was very young. He died in 1961, when I was fifteen years old. My father was a thief who was shot and killed by the police. My mother has told me that he worked as a cement finisher until he injured his back and turned to alcohol. I was around two or three years old when he became an alcoholic.

5. I last saw my father the day before he was shot and killed. He walked into our house one day and I could see that he had been drinking. He said that he was there because he wanted to see his kids. I told him that I did not see it as his privilege after all those years

[redacted] /s/PGH]. My father then left the house. My mother was not home when this incident took place.

6. My mother gave three children up for adoption that I am aware of. In approximately [redacted] [(?) /s/PGH] she gave birth to twins. She gave them up for adoption and I do not remember them at all. I was only a few years old at the time and do not know the family history on this. I also have a sister, Debbie, who was given up for adoption. I was six or seven years old when my mother gave birth to her.

7. Later Richard Hill married my mother, Marie Hill. At the time Richard Hill, alone, was raising his young children after his wife died. Richard turned his children loose when they got older and as a result, his daughter Virginia, and her siblings, were wild.

8. The marriage did not last long though. My mother was the dominating type and Richard Hill was a wimp.

9. After my mother and Richard Hill divorced, I don't think that my mother ever legally remarried. She did, however, move to Arkansas in the 1960's and there she lived with a man named L.H. Clark. I think that Mr. Clark died from cancer but I never really knew him.

10. My two older brothers, Billy Wildren Hill and Darrel Wayne Hill, spent more time with my father because they were older. When I was three years old, Bill was already twelve. I have always thought that this was the reason that Bill and Darrel were the ones who got into trouble. These two brothers stayed in trouble. Every time I turned around, one of my brothers was in the newspaper. This was hard on me and the rest of the family.

11. My brothers Bill and Darrel are both completely institutionalized. Bill has been in prison all of his life. For the last 35 or 40 years, Bill has only been out of custody for a total of three or four years. It is the same story with Darrell. He was locked up from the time I was seven years old until I was fifteen. During the 1970's I tried to help both brothers when they got out of prison. I gave them jobs, cars, etc. It did not work though because they were so institutionalized. In fact, the last time I saw Darrel, he stuck a pistol in my face. This was two days before he shot and killed a man in Arkansas. Darrel was using dope at that time.

12. I have an older brother, Dennis Hill, who lives in Oklahoma. Dennis is an alcoholic. He no longer drinks. He got married and got religion. I haven't seen him in several ~~years~~ [months /s/PGH] and have no contact with him.

13. My brothers Darrel and Bill are also alcoholics. They can never have just one beer. I have been in bars with all of them and when I would leave to go home they would still be at the bar drinking.

14. Having two of my older brothers constantly in trouble with the law was very hard on my mother. The police would come in and shake our house down in the middle of the night looking for Bill or Darrel. All of us children have gone our separate ways since we've grown up.

15. To the best of my recollection, my brother Darrel and my step-sister Virginia were together during the late 1950's and the early 1960's. I would not be at all surprised if Virginia used drugs and alcohol because she was with Darrel and I know he did.

16. I was never contacted by attorneys or investigators appointed to represent my nephew at trial, on appeal, or in post-conviction proceedings. Had any attorney or investigator contacted me, I would have disclosed the information stated in this declaration, ~~as well as other information. I also would have been willing to testify on my nephew's behalf in any proceeding.~~ [/s/PGH]

I declare under penalty of perjury that the foregoing is true and correct.

Dated this 1 day of October, 1998.

/s/ Phillip G. Hill
Philip Hill

Declaration by Josephine Snyder

I, Josephine Snyder declare under penalty of perjury the following to be true to the best of my information and belief:

1. My name is Josephine Snyder and presently I reside in Tulsa, Oklahoma. I have been friends with Marie Hill for over forty years.

2. When Marie's son, Darrel, was a boy, he would come over to my house and stay the night. He would stay over at my house on the weekends – Friday and Saturday nights. If my family and I went someplace on Sunday, Darrel almost always was allowed to go with us.

3. My husband had two sons of our own but we were very fond of Darrel as well. In fact, we wanted to permanently adopt Darrel and make him part of our family. [JS] Darrel's father, however, would not allow us to adopt his son.

4. Some years later, Marie became pregnant agin. The father of this unborn child was my uncle, Aaron Fain. Before the baby was born, Marie told me that she was going to give this baby up for adoption. I told Marie that if the baby was a girl that I would like to have the baby. We did not discuss this issue again but I assumed that we would talk about it again if it was going to happen.

5. One day I received a telephone call from Marie Hill. She was calling me from the hospital and had had her baby. Marie asked me, "Remember what you said? Well, if you want her come and get her. If you don't want her I'll just leave her here because I'm leaving." I asked Marie to give me enough time to get over to the hospital. I had to go out and buy clothes for the baby because her call was

unexpected. I was allowed to adopt Debbie because I was related to her.

6. I have had my daughter, Debbie, ever since she was two days old. My husband and I went through the courts and legally adopted Debbie. From the time that Marie called me to come and get the baby, she never expressed any interest in Debbie again.

7. Darrel's father was still alive when Marie gave birth to Debbie. Mr. Hill was shot dead by the police during the commission of a robbery with his son Darrel.

8. I was never contacted by attorneys or investigators appointed to represent Jeff Landrigan at trial, on direct appeal, or in post-conviction proceedings. Had any attorney or investigator contacted me, I would have disclosed the information stated in this declaration, as well as other information. I also would have been willing to testify on Jeff's behalf at any proceeding.

I declare under penalty of perjury that the foregoing is true and correct.

Dated this 11-13-98 day of November, 1998.

/s/ Josephine Snyder
Josephine Snyder

Declaration by Darrel Hill

I, Darrel Hill declare under penalty of perjury, that the following to be true to the best of my information and belief:

1. My name is Darrel Hill and I am the biological father of Jeffrey Landrigan, formerly known as Billy Patrick Wayne Hill. Presently, I reside in Tucker, Arkansas where I am on death row.

2. I was married to Jeff's mother, Virginia Gipson (f.k.a. Letha Virginia Hill), in 1959. During the time that we were together, I abused drugs and alcohol. I used a drug called Valo, an over-the-counter nasal inhaler. Inside of the inhaler was a greasy cotton material. I would stick a needle directly into the cotton ball and then inject myself with the greasy substance. I used Valo four or five times a day. I had strong hallucinations when I used Valo. I also used Seconal, Nembutal, cocaine, heroin and anything else that was available to me. In addition to this, I drank moonshine that was about 80% pure.

3. During the time that Virginia and I were together, she abused drugs, particularly amphetamines. She used drugs before, during, and after her pregnancy. She used whatever drugs were available to her. Virginia also drank alcohol. I do not know if Virginia drank when she was pregnant with Jeff.

4. My father was Bill Hill. He was shot and killed by a police officer while attempting to flee the scene of a robbery/burglary that he and I committed. My father and I were not the only ones in our family to commit crimes. Excluding Jeff, there have been four generations of Hill men who were outlaws.

5. Virginia's father, Richard Hill, married my mother, Marie Hill, before Virginia and I were married.

6. While Virginia was in the delivery room in labor with Jeff, I was in the waiting room with my mother, Marie Hill. I went into the bathroom every hour and injected Valo while we waited for Jeff to be born.

7. After Jeff was born, we lived with my mother for a while. Her next door neighbor was a man named Tommy Owens.

8. The last time that I saw Jeff he was approximately six months old. I was in prison serving 14 months for burglary. Virginia brought Jeff to visit me and that was the last time I saw him. When I was released from prison I learned from my mother that Virginia had moved and that Jeff had been given up for adoption. It took me a few months to locate Virginia. I was very angry with her for giving our son away because I felt that she had taken the only thing that had ever been mine. I was so angry with her.

9. Jeff made contact with me after he met Tommy Owens in prison in Oklahoma. Jeff told me that Tommy walked up to him and told him that he (Jeff) must be Darrel and Virginia Hill's son because he looked just like Darrel. From that point on, Jeff and I have corresponded by letter.

10. I spoke to Jeff's adoptive mother, Dot Landrigan, several times by telephone. She was always drunk when we spoke.

11. I was never interviewed by attorneys or investigators appointed to represent my son at trial, on appeal or in post-conviction proceedings. Had any attorney or

investigator contacted me, I would have disclosed the information stated in this declaration, as well as other information. I also would have been willing to testify.

I declare under penalty of perjury that the foregoing is true and correct.

Dated this 10-16-97 day of October, 1997.

/s/ Darrel Hill SK877
Darrel Hill

Declaration by Shannon Sumter

I, Shannon Sumter declare under penalty of perjury, that the following to be true to the best of my information and belief:

1. My name is Shannon Sumter and I am the adoptive sister of Jeffrey Landrigan. Presently, I reside in Tulsa, Oklahoma.

2. My father was Edward Victor "Nick" Landrigan. He grew up in a large, Catholic family in Lockport, New York. His father, Edward Landrigan, Sr., was a blue collar worker. Edward Sr.'s wife, Lillian, was a homemaker. My father was raised with good Irish discipline by his father. This discipline would be considered child abuse by today's standards. I think my father was bitter regarding his strict upbringing and as a result made sure not to treat his own children in that manner. He left his family, entered the military and attended college on the G.I. bill. He met my mother at the University of Texas at Austin, where they were both students. We only went to visit my dad's family in Lockport two or three times.

3. My mother, Dorothy Fae "Dot" Landrigan (nee Jeffrey), was from Texas. In contrast to my father, she came from a devout Baptist family. Her father, Jess, worked blue collar odd jobs but was a heavy smoker and became sick to the point that he could not work. Her mother, Mabel, was a talented seamstress. She was the main breadwinner in the family after Jess became ill. My mother was from a small family. Her only sister, Mary Kathryn, died when she was three years old from meningitis.

4. My mother earned a degree in journalism and worked for a newspaper in Austin briefly. My father

earned a degree in geology. My parents married in 1947 or 1948. My mom quit working after I was born in 1952. My father got a job with ~~City~~ [Cities /s/ SS] Service and transferred to Bartlesville in 1953.

5. I was the only child born to Dot and Nick. When I was seven or eight years old I recall that my parents started the application process to adopt a baby.

6. I was ten years old when our family adopted Jeff. I remember that I came home from school one day and both of my parents were home waiting for me. They told me that I needed to get some things together because we were going to Oklahoma City for the night. My parents told me that I was getting a new brother. The next morning, my parents met with a social worker in Oklahoma City, signed some papers, and we left with Jeff who was eleven months old at the time. My parents were entirely unprepared to take a baby home – they had not even had time to go and buy diapers or any other supplies.

7. When Jeff first came to my parents as a baby it was somewhat of a disruption to the family. They had not had a baby in their home for a long time and Jeff was very different as a baby than I had been. My mother told me that I had been an obedient child whereas Jeff was not.

8. When Jeff was a baby, he had trouble sleeping through the night and did not do so for quite some time. He was fearful of the dark and would crawl out of his crib as soon as he was old enough to do so. Jeff would crawl down the hall dragging his laundry basket full of toys. Then he would crawl under our parents' bed and go to sleep. In the morning when I got up I would see part of his head sticking out from underneath the dust ruffle. He

sometimes slept under my bed as well. This was a ritual that continued until Jeff was approximately six years old.

9. Jeff was not more connected to any one person in our home when he was growing up. I do not recall Jeff ever having a dislike of anyone. He was reserved around strangers. He was not overly friendly nor was he overly clingy with them.

10. Even at a very young age, Jeff had a temper and would throw temper tantrums. My parents were taken aback by this because I was not like that as a child. If Jeff was mad at you, he would throw something at you. If you slammed the door shut on him, he'd stand there and kick the door. Jeff and I sometimes would get into fights. I remember once when he was between the ages of 8 and 10 and he was angry with me. He picked up a little statue and threw it at me. I went into my room and locked the door and he stood outside of my door screaming.

11. Although Jeff had a bad temper, he was not particularly argumentative. However, if you asked him to do something and then went to check on him, he frequently got sidetracked and hadn't done whatever it was that you had asked him to do.

12. I don't think my parents ever sat down with Jeff and told him he was adopted though. [they never hid the fact either /s/ SS] One day when Jeff was still in elementary school he came home crying because a boy told him that he couldn't play with them because he was adopted. My mom found a book for Jeff that told a story on a child's level that explained what it meant to be adopted.

13. I often wonder if Jeff suffered from fetal alcohol syndrome. I think that Jeff had some of the physical traits associated with FAS.

14. Jeff would start activities but then lose interest in them. He participated in the Indian Guides which was like the Boy Scouts and was sponsored by the YMCA. He also played T-ball, bowled and took karate lessons. But he would get to the point where he would say he no longer wanted to participate in the activity anymore so don't bother to take him. Whatever he expressed an interest in, my parents would let him try it. If it was too much hard work though, Jeff would quit. He got bored easily.

15. Jeff started skipping school and doing drugs when he was pretty young. He and I were very different from one another.

16. Jeff was around twelve years old when he really started acting out. I think that his behavior was exaggerated by his drug use. It took both my mother and father to manage Jeff's behavior, especially when he reached adolescence. My mother could still function at that time and was still working, but her drinking was progressive. It got to the point a few years later where I did not want to leave my daughter, Sheridan, alone with my mother because of her alcoholism.

17. Jeff and my mother seemed to suffer from greater discord when my father was out of town on business. I recall an incident when my mother hit Jeff with a frying pan hard enough to leave a dent. My daughter witnessed Jeff push his mother up against a table and slap her across the face.

18. My mother was an alcoholic. Her alcoholism became worse over the years. When I still lived at home, my mom had to have a couple of drinks when she got home from work before she would make dinner. After I left for college though, my mom started drinking in the morning before she went to work. I don't know if Jeff 3 behavior exacerbated her drinking problem or if her drinking problem exacerbated Jeff's behavior. Eventually they made her retire from work and she earned disability for three or four years, which gave her more time at home to drink. My mom had problems walking that were caused by her drinking – her balance was affected. Also, her liver showed signs of damage.

19. When my mother was drinking she would repeat herself and was very irritating. She was not a quiet drunk. She would drink until she passed out. She got to the point where all she drank was vodka. She consumed a fifth a day or more. My father was an enabler and would buy her vodka for her. At one point she became very jaundiced and was the color of a pumpkin. This was about a year before her stroke, in 1989.

20. After my mom's stroke, the doctors performed a liver scan and found that only 20 to 25% of her liver was functioning.

21. When I was disciplined by my parents it was done verbally. I can count on one hand the number of times that I was ever spanked by my parents. My father was tolerant to a fault. He was raised in a harsh environment and didn't want to take it out on his kids. When my dad disciplined me, all he had to do was look at me and say, "Now Shannon. . . ." If I felt any disapproval from my father, that was enough for me. With Jeff though, Dad had

to be both sterner and louder. Then Jeff sometimes paid attention to him, sometimes not. Jeff got spanked a lot as a result of this. My parents tried a lot of different tactics with him. They withheld privileges and rewards from him, but he did not learn.

22. My father was stoic and kept his emotions to himself. My mother was very expressive and was the yeller of the family. She pretty much ran the show at home. My father and I learned to just go along with Mom because it was easier that way. Jeff never learned to do that. He did not ever learn from experience.

23. When Jeff was 10 or 12 years old, he decided that he was too old for a babysitter anymore and was allowed to stay home alone after school from that point on. There were boys in the neighborhood that Jeff was close with and they were all left largely to their own devices after school. It was around that time that Jeff hit puberty and they all started getting into trouble together. They broke into a house together and stole some things when Jeff was about fourteen years old and there were also some vandalism complaints about Jeff.

24. When Jeff was in junior high, about 12 or 13 years old, my parents sent him to a camp for troubled boys. Jeff had begun to get into enough trouble around this time to get the police involved. Starting around this time, it was my family's weekend routine to go and visit Jeff wherever he was in custody.

25. When Jeff was twelve or thirteen he was breaking some household rules. For example, he wasn't doing his homework and started skipping school. During this same period of time my dad had to travel on business trips. My mom would call him wherever he was on his trip

because she could not get Jeff up in the morning to go to school. My mom would get hysterical and my dad would try and talk to Jeff on the phone. My dad finally told his boss that he couldn't travel anymore because of problems at home.

26. Growing up, Jeff would do just about anything in order to avoid going to school. Although my mother would drive him to school and watch him walk in the front door of the building, Jeff would then walk back out the door once she drove off. Jeff's grades in school were horrible and he had no interest in anything. He quit sports and there were no classes that he liked.

27. When my daughter, Sheridan, was five or six years old Jeff took over the basement in my parents' home. He originally had his bedroom upstairs but then took the room that my parents used as a ~~living~~ [family /s/ SS] room. It was like Jeff had his own apartment – it had a private entry so Jeff could come and go as he pleased. Unfortunately, all of his friends could come and go as they pleased as well. He would drink and use drugs in his basement apartment. Jeff trashed the basement. Up until the time that Jeff took over the basement, our family used to celebrate Christmas in that room.

28. When Jeff turned sixteen, my parents bought him a car. He promptly wrecked it and they bought him a new one. Then they had him switch cars with me because my car was older. Jeff then wrecked my car. Jeff wrecked at least five or six cars. The wrecks were high speed and involved alcohol.

29. Around the time that Jeff was sixteen, he had a drinking contest with his friends to see who could drink the most. When my family could not wake Jeff up, they

called an ambulance for him. Jeff and his friends drank on weekends and maybe were using drugs as well. I think that this is what contributed to the beginning of the vandalism as well. Alcohol was always available in our home because of my mom but she never mentioned Jeff getting into her liquor.

30. Jeff married his wife, Sandy, in 1981. She was pregnant when they got married. Although Jeff had brief periods of employment during this time, he and Sandy both had the attitude that my parents could support them. My parents perpetuated some of this, like they did when they continued to buy him cars. My parents kept Jeff and Sandy afloat.

31. Jeff didn't care about anyone except maybe himself. He is very self-centered. He would start things but never follow through and finish them. He was already heading this direction before he met Sandy but this behavior became more pronounced with her.

32. There were many times that Jeff was close to death. I am referring to drug overdoses, alcohol abuse, and automobile accidents. Also, in the incident that resulted in Jeff being convicted of murder in Oklahoma, Jeff could have easily been killed by his best friend, Greg. Greg was much bigger than Jeff.

33. My parents were a lot more tolerant of Jeff than if I had done all of these things. Jeff did not seem to get it that there are rules to play by. He never apologized for anything or took responsibility for his actions.

34. During one of their many trips to visit Jeff wherever he was in custody, my parents drove several hours to see Jeff and took him a hamburger. Jeff came out

for the visit, took the hamburger, and then left because there was a ball game on television that he wanted to watch. This was the last time that my mother ever visited Jeff.

35. My mother and Jeff's biological father, Darrel, corresponded after Jeff found out who his birth parents were. Darrel offered my mother some comfort and gave her additional information about Jeff's background.

36. My parents took all of the responsibility for Jeff's behavior. I now realize that it probably didn't matter who raised Jeff; he was going to have problems.

37. Jeff's biological daughter is just like Jeff. She doesn't do her schoolwork and was kicked out of school. Jeff's daughter is currently in a behavioral treatment facility. I think that Sandy drank alcohol and used drugs when she was pregnant with their daughter. Sandy would abandon their daughter at my parents' house for days at a time. Jeff's daughter is just like Jeff.

38. Jeff and I never had a very close relationship. He was very impulsive and has trouble with attachment. We no longer ~~write~~ [talk /s/ SS] to each other but he does ~~call~~ [write /s/ SS] when he needs something. I take care of sending Christmas gifts to his daughter for him. My relationship with Jeff is for the most part terminated. Some of this is self-preservation and protection. In spite of this, Jeff is still my brother and I do not want him to be executed.

39. I was never contacted by attorneys or investigators appointed to represent my brother at trial, [or /s/ SS] on appeal, ~~or in post-conviction proceedings~~ [omit /s/ SS]. Had any attorney or investigator contacted me, I would

have disclosed the information stated in this declaration, as well as other information. I also would have been willing to testify on Jeff's behalf at any proceeding.

I declare under penalty of perjury that the foregoing is true and correct.

Dated this 26 day of October, 1998.

/s/ Shannon Sumter (SS)
Shannon Sumter

Declaration of Shannon Sumter

I, Shannon Sumter declare under penalty of perjury, the following to be true to the best of my information and belief:

1. My name is Shannon Sumter and I am the adoptive sister of Jeffrey Landrigan. Presently, I reside in Tulsa, Oklahoma.

2. My mother was Dorothy "Dot" Landrigan. My mother worked for a newspaper in Austin but quit working after her pregnancy. She did not go back to work until I was in high school. When my mother returned to work, she worked in the medical records department of the local hospital in Bartlesville. She worked the 3:00 p.m. to 11:00 p.m. shift. Working a later shift ensured that either my father, Nick, or I would be home in time to take care of Jeff. Eventually, our family made arrangements to have Jeff go to a babysitter after school. Each day after school, Jeff went to stay with a family that lived near us. This routine lasted until Jeff was ten or twelve years old. That was when Jeff decided that he was too old for a babysitter anymore and was allowed to stay home alone from then on.

3. My mother left her job at the hospital to work for Phillips Petroleum. She worked for Phillips in Bartlesville until she retired.

4. Although she did not continue to work for a newspaper, my mother maintained a lifelong interest in journalism. She helped me with my homework, especially writing and English.

5.a. My mother loved to entertain and have parties. She was active in anything I expressed interest in. For example, she was the scout leader for my Girl Scout troop.

5.b. My father, Nick, began working for the Bartlesville, Oklahoma office of Cities Service in 1953. He was their chief log analyst~~/logging engineer~~. [geologist /s/ SS] He worked for the Bartlesville office until his transfer to the Cities Service Tulsa office. From that time on, he commuted the sixty miles to Tulsa every day. He drove in a van with several other co-workers.

6. Although our parents were supportive and provided well for us, ours was not a very affectionate or demonstrative family.

7. When Jeff was seven or eight years old, the man who ran the local bowling alley befriended Jeff. Jeff and he spent a lot of time together. The man became sick and died from cancer. When he passed away, Jeff lost a father figure.

8. Also when Jeff was about eight years old, he and his friend Mindy decided to run away from home. I do not know why they did this. They took their little red wagon and crossed heavy traffic to get to the local shopping center.

9. The first custodial placement that Jeff went into may have been initiated by my parents and not the courts. I know that they sent him to a camp for troubled boys when he was in junior high.

10. In 1970 I left Bartlesville to begin college. I attended Oklahoma University for one year. After that, I married Tim Rigsby and we had a daughter, Sheridan. When Tim

and I got a divorce, he cleaned out our joint checking account and I had to borrow money from my parents.

11. I returned to college and became a registered nurse. For some time, I worked at a job that required me to work weekends. As a single mother, I left my daughter in the care of my parents on the weekends when I had to work. In 1979 I got a job that gave me weekends off. This came as a relief to my daughter because she no longer had to spend weekends with my parents and Jeff. By this time my daughter was eight years old and Jeff's behavior was out of control.

12. Jeff moved out to Texas for a while to live with our maternal grandmother. He got into trouble in Texas though and this started to take a toll on our elderly grandmother's health. For this reason, Dot and Nick moved Jeff back to Bartlesville.

13. In 1982, Sandy and Jeff were expecting the birth of their child. That same year, I married Steve Sumter.

14. I was never contacted by attorneys or investigators appointed to represent my brother at trial or on appeal. Had any attorney or investigator contacted me, I would have disclosed the information stated in this declaration, as well as other information. I also would have been willing to testify on Jeff's behalf at any other proceeding.

I declare under penalty of perjury that the foregoing is true and correct.

Dated this 13 day of November, 1998.

/s/ Shannon Sumter (SS)
Shannon Sumter

Declaration by Robert Forrest

I, Robert Forrest declare under penalty of perjury, the following to be true to the best of my information and belief:

1. My name is Robert Forrest and my family lived in the same neighborhood as the Landrigans. I was friends with Jeff Landrigan and we attended the same schools. Presently, I reside in Bartlesville, Oklahoma.

2. We moved in next door to the Landrigans when I was approximately ten years old. My brother, Dale, and I were approached by Jeff and his friend, Arthur Athens, who was known as Klingman. They said that as the new kids in the neighborhood, we had to "whip them." We all rolled down a little hill wrestling and my brother and I just figured that was how it was living in the city. We had previously lived on farms. We all became friends little by little and remained friends until junior high. We took martial [Judo /s/ RF] arts together, but Jeff did not stick with it.

3. Jeff was raised with "no discipline." Jeff's father, Nick, was always quiet. Jeff's mother, Dot, drank about a gallon [? I can't be sure of that? /s/ RF] of whiskey a day. Dot was usually a peaceful drunk though. Dot was an alcoholic. As long as she had her whiskey, she was fairly passive unless you crossed her. If you did cross her, she got angry. This would usually happen right before she passed out. Dot was drunk every night. [? I can't make that statement. /s/ RF]

4. Jeff always got his way. My brother and I did as well, but Jeff's family had the financial means to fulfill his wishes and ours didn't. Jeff's dad took us to the bowling alley, the swimming pool, the roller rink, etc. We also had sleep overs at each other's houses that. ~~Nick organized~~

[/s/ R.F.] Looking back, Nick probably thought that it was best if everyone was away from Dot when she was drinking, himself included. I always thought that Jeff probably got tired of seeing Dot stewed all of the time.

5. We all tried cigarettes but Jeff was the one that stuck with it. My brother and I got into sports whereas Jeff got into long hair and rebellion.

6. It wasn't until we were in junior high that we really got introduced to drugs. In junior high I recall mostly marijuana and cigarettes but then pills in high school. Cocaine and crystal came later, around 1978. There was a lot of peer pressure to use the drugs. Jeff got into marijuana by seventh grade. In high school he was heavily into crystal and meth. I did it myself as well. It made me hallucinate and do stupid things, including staying up for days on end. Back then, everybody's heads was unscrewed due to drug use.

7. When we were around eleven or twelve years old, Jeff told me that he was adopted. He seemed upset when he told me and I had the impression that he wanted to talk to his dad.

8. Dot and Nick gave and gave to Jeff but they gave him the wrong things. They gave him material things but I did not see them giving [many /s/ RF] hugs or kisses. They were warm in that I did not see them fight but they were not a warm family: Dot was a drunk and Nick was quiet.

9. When we were using drugs, we experienced behavior changes. We were all like that but I could tell that Jeff was angry. We were all stewed and stupid – menaces to society.

10. I was never contacted by attorneys or investigators [probably because I would have been a hostile witness

/s/ RF] appointed to represent Jeff Landrigan at trial, on appeal, or in post-conviction proceedings. Had any attorney or investigator contacted me, I would have disclosed the information stated in this declaration, as well as other information. ~~I also would have been willing to testify on his behalf at any proceeding.~~ [?I would have testified to this declaration but would not testified on Jeff's behalf so as to try to clear his wrong actions /s/ RF]

I declare under penalty of perjury that the foregoing is true and correct.

Dated this Nov. 4 day of October, 1998.

/s/ Robert J Forrest
Robert Forrest

STATE OF OKLAHOMA

DEPARTMENT OF PUBLIC WELFARE

Mr. L.E. Rader, Director
Dept. of Public Welfare

Date: May 6, 1963

Deborah Rothe
Dist. C.W. Supervisor

Attention: Mrs. Mary Rush

LANDRIGAN, E.V.
Trial Adoption
Washington County

Enclosed please find the medical report on Jeffrey Landrigan. The Landrigans are most anxious to complete this adoption as they are planning an extensive vacation this summer and will be out of the state. Would you please send the legal papers to Mr. Lloyd Rowland, Attorney, Price Tower, Bartlesville, Oklahoma.

/s/ D. Rothe

DR:as

Beulah Phillips
Intake Worker
Tulsa Unit
11-21-62

Hill, Billy
CW-13194
Tulsa County

IDENTIFYING INFORMATION: Social Service Exchange lists pending ADC application dated 7-16-62; TCW #2795-C, 10-13-61; DPW-D, 1-24-62. Virginia Hill's husband was listed as Deryl Wayne Hill. The paternal grandparents are listed as William and Alta Hill, who have the following: JCO#3376 dated 3-56; ADC #107127 dated 1-20-51 and another JCO from 1952.

Beth Clay of Family Services Division was contacted, who said she had an application for Virginia Hill on the behalf of her son, Billy Hill, whose birthdate was listed as 3-17-62. Virginia Hill's birthdate was 9-3-44. The application was taken 7-16-62 and cancelled 11-13-62 when she was unable to locate Mrs. Hill. The address listed at the time of application was 641 N. Cheyenne, apt. #9.

[11/8/62]

Mrs. Hess of Barnard Nursery telephoned to report a baby known to them as Billy Hill was placed in the nursery for one day approximately three weeks ago from this date and the manager of the nursery, Mrs. Hess, had tried several times to get in touch with the child's mother at the Bliss Hotel, which was the address given at the time the baby was left at the nursery. Every time the room at the hotel is contacted a girl answers the phone, pretending to know nothing of the whereabouts of Mrs. Hill. The person gave first one excuse after another for not coming to see the child and then finally said Mrs. Hill was sick in a hospital in Oklahoma City. When contacted again on the telephone, the girl remarked that she had no way of caring for the baby. Mrs. Hess was referred to Juvenile Court and Rhea Folger, Counselor for Juvenile Court, had the baby picked up and placed in the Emergency Shelter on this same date.

Mrs. Folger, Counselor for the Juvenile Court, contacted Mrs. Page, manager of the Bliss Hotel, who said three girls had been renting a room at the hotel and had slipped out a few days after being contacted by the Barnard Nursery manager and they had not paid their hotel rent. The girl who is supposed to be the mother of the child was listed in the hotel books as Virginia Hill. She is a small, blonde girl about 5 feet, two inches tall, weighing

approximately 95 to 100 pounds. The second girl called herself Mrs. Jim Dalton, Virginia's sister. She has dark hair and is a tall girl. The third girl was signed in as Annetta Maybee and this girl was pregnant. It was understood by Mrs. Folger that the negro porter of the hotel had been in touch with the girls and could possibly furnish more information as to the girls' whereabouts. However, he had been very reluctant to give any information and was evasive in answering questions. He did say that the girls had gone to Room 302 at the Reeder Hotel to visit a friend who was living there at the time. The last he had heard of any of the three girls was that one of them said she worked at the Mobile Club on South Peoria.

Worker contacted Beth Clay, Caseworker for Family Services Division, who said at the time of Mrs. Hill's application for Aid to Dependent Children, she was reported to be living with her sister, Ginger Reynolds, at 641 N. Cheyenne. Her sister, at the time, worked for the Elite Club, however does have an application pending at Borden's Cafeteria. Mrs. Hill's husband was listed as Deryl Wayne Hill who is now in McAlester State Penitentiary, Penn #67119. Billy Hill was the only dependent she had listed on her application and it was not stated in the intake whether or not Mrs. Hill was pregnant again, however it was stated that

Beulah Phillips
Intake Worker
Tulsa Unit
11-21-62

Hill, Billy
CW-13194
Tulsa County

Annetta Maybee, who was with Mrs. Virginia Hill at the time of the application, is separated from her husband

whose name was Roy Compton Maybee and Mrs. Maybee was very definitely pregnant. Mr. Hill's parents are listed as William and Alta Hill, who are now residing in Locust Grove.

[11/16/62]

Juvenile Court face sheet, narrative and legals received by this office.

[11/19/62]

On this date Billy Hill was moved from the Emergency Shelter to the boarding home of Mrs. Lonnie Geren, at 306 West Knoxville, Broken Arrow, Oklahoma.

[11/21/62]

An emergency clothing order forwarded to the State Office.

Worker talked with Mr. Larry Myers, Counselor for Juvenile Court, and this case has not been set on the Court docket, however he will keep the worker informed.

ACTION TAKEN: This is being accepted as an active Child Welfare case with Billy Hill being cared for in a foster home.

/s/ [Illegible]
BP:hm

Harold W. Arrowood
Caseworker
Tulsa Unit
12-7-62

Hill, Billy
CW-13194
Tulsa County

[11/29/62]

A visit was made to the Geren foster home at 307 West Knoxville, Broken Arrow, Oklahoma. Mrs. Geren related

that Billy Hill was ill. Ever since he has been in her home he has had trouble breathing and he has a "rattle" in his chest. She felt that the child might have asthma. He frequently cries in the night and has trouble getting his breath. She has to sit up with him.

The child was taken on this date to Dr. Kramer for an examination. Billy is 27 inches tall and weighs 18 pounds, 14 ounces. Dr. Kramer diagnosed his illness as bronchitis and he was given an injection of bicillin. He was also given a TB patch test, a blood test and a urine specimen was taken. Dr. Kramer requested that the child return in one week.

[12/5/62]

On this date the clothing which had arrived from the State Office was taken to the Geren foster home for Billy Hill. Mrs. Geren reported that the child's health was much improved. She stated that he is now eating solid foods and was doing much better. She felt that his breathing is also improved and he is now sleeping all night without awakening.

The child was returned to Dr. Kramer's office on this date for further examination and treatment. Dr. Kramer stated that the urinalysis on the child checked out okay, and that the blood test revealed an iron deficiency and a susceptibility to allergies. Upon examination, Dr. Kramer felt that the child's bronchitis was much improved and that further examination and medication was not needed at this time. An examination of the child's eyes revealed no trouble. Billy was given an oral Polio vaccination and a 3-in-1 shot. Dr. Kramer prescribed medication for the child's iron deficiency and asked that he return on Friday, January 4, 1962.

The medication prescribed was purchased at Prather's Prescription Shop and the boy's shoes were purchased at Sear's.

Mrs. Geren, foster mother, was advised concerning the administering of the ferrisol drops prescribed by Dr. Kramer for the child and was asked to contact this worker if Billy's breathing did not continue to improve. The child seems to be very happy in the foster home. He laughs a great deal and is very active and playful. Both Mr. and Mrs. Geren appear quite fond of ~~the~~ Billy and are very proud of the improvement he has made since he has been in their care.

/s/ [Illegible]
HWA:hm

[/s/ JL]

Harold W. Arrowood
Caseworker
Tulsa Unit
12-26-62

Hill, Billy
CW-13194
Tulsa County

[12/7/62]

A telephone call was received from Mr. Bob Talbutt, Probation Supervisor of the Tulsa County Juvenile Court. Mr. Talbutt related that Mrs. Alta Marie Clark, paternal grandmother of Billy Hill, is in his office, asking about the child. Mrs. Clark states that she does not know the whereabouts of the child's mother. We took down her home address (5432 West 8th) and asked Mr. Talbutt to advise her that we would visit her in her home on Monday.

[12/10/62]

A visit was made to the Clark residence at 5432 West 8th Street and no one was at home.

A telephone call was received from Mr. Larry Myers, Juvenile Court Counselor. He stated that Mrs. Clark and Mrs. Virginia Hill had been in his office today. Mrs. Hill came to Mrs. Clark's residence on 12-8-62. Mr. Myers advised them to contact this worker for an appointment.

[12/11/62]

Mrs. Virginia Hill telephoned the office today, asking for an appointment to talk with this worker. We advised her that she could come to the office at 10 a.m. on 12-13-62.

[12/13/62]

Mrs. Virginia Hill was seen in the office today. She came in with her hand pressed against her side and stated she had been very ill all night with a side ache but that she didn't like to go to doctors because she was afraid of shots. We questioned her regarding this and learned that she has been having severe pains for quite some time. It was suggested to her that it would be in her best interest to seek medical attention immediately to [illegible] her illness from becoming more serious.

Mrs. Hill states that she placed Billy in the Bernard Nursery temporarily while she sought employment. During this time she had no permanent address but was staying nights here and there with "girlfriends". She found a job with a "magazine crew", which required traveling around so she left the child in the nursery. Then she became ill and was unable to come and pick the baby up. She says that she had her sister, Jean Reynolds, to contact

the nursery and learned that Billy had been "given to the Welfare". At this time, she became afraid that she would be charged with child abandonment so she hitchhiked to the home of her paternal grandmother, Mrs. Betsy Childress, near Okemah, Ok. Mrs. Hill is not sure of the dates of any of the above occurences.

Harold W. Arrowood
Caseworker
Tulsa Unit
12-7-62

Hill, Billy
CW-13194
Tulsa County

On 12-7-62 Mr. and Mrs. Childress brought Virginia Hill to Sand Springs, Okla. and the home of her maternal grandmother, Mrs. Irma Hill, 506 W. 1st, Sand Springs. On 12-8-62 she went to the home of her mother-in-law, Mrs. Clark, and she is presently living there. Mrs. Hill would like to have her baby returned to her custody and she plans to live with her mother-in-law until she can get a job and "get on her feet". She states that she is not pregnant at this time.

The following people are presently living in the five-room Clark home at 5432 West 8th: Mr. and Mrs. Leo H. Clark, married 1-8-62; three of Mrs. Clark's children, Dennis Hill, age 20 years; Phillip Hill, age 16 years; Carolyn Sue Hill, age 13 years; and Mrs. Virginia Hill, daughter-in-law. Mr. Clark does building construction work and Mrs. Clark is a housewife. The two Hill boys are employed and the girl, Carolyn Sue, is in school.

Mrs. Hill states that her in-laws are very nice to her and that they want her and her baby to live with them. They are aware of her intent to divorce Deryl Wayne Hill.

We explained the purposes of the Tulsa County Child Welfare Unit to this woman and told her that we were interested in working out the best plan for Billy. We also informed her that we intended to check into her background and her present home environment during the course of our study.

Mrs. Hill asked if she could visit her child. We called Juvenile Court and got the permission from Judge Young for an office visit. Mrs. Hill was advised we would bring Billy to the office tomorrow, 12-14-62, at 9:30 a.m. for a short visit.

BACKGROUND INFORMATION: Mrs. Virginia Hill (maiden name Hill also) gave the following background information. She was born 9-3-44 in Tulsa, Okla. Her mother died when she was very young and she spent her childhood in the Sand Springs Orphans' Home. She began writing to Deryl Wayne Hill, born 9-11-40, while he was in the prison at McAlester at his mother's request. He was released from prison and they were married on 2-18-61 in Miami, Oklahoma. At this time, Mrs. Hill quit school in the 11th grade. Mrs. Hill relates that after three months of married life her husband began drinking and stealing again and that he never worked or supported her or the baby. At this time she plans to file for a divorce.

[12/14/62]

Billy Hill was picked up at the Geren foster home, and brought to the office, where he visited with his mother, Mrs. Virginia Hill, and his paternal grandmother, Mrs. Clark. The relatives displayed a great deal of affection for the child.

[12/17/62]

Mrs. Virginia Hill came into the office today while this worker was out of the office. She did not leave any message.

[12/18/62]

A telephone call was placed to Dr. Rupp's office, Mrs. Hill's family physician, to learn if Mrs. Hill had been into their office recently. We learned that Mrs. Hill had been placed in Hillcrest Hospital yesterday evening with severe abdominal pains. The nurse at Dr. Rupp's office said that she believes Mrs. Hill was admitted as a county patient and that Dr. Rupp will not be giving care.

Harold W. Arrowood
Caseworker
Tulsa Unit
1-18-63

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[12/27/62]

On this date we visited the Clark residence and talked with Mrs. Virginia Hill. She states that she stayed at Hillcrest Hospital for four (4) days and that her bill was to be paid by the Crippled Children's Unit. Her doctors were Dr. Byron Steele and Dr. Mann. Mrs. Hill states that her physical condition improved a great deal during the time she was hospitalized and that she continues to improve at this time. She did not receive the diagnosis from the doctor but she believes that her abdominal pains were caused by inflammation of the gall bladder, or the female organs.

[12/28/62]

We telephoned Dr. Byron Steele at his office and talked with him regarding Mrs. Hill. He states that he was unable to diagnose Mrs. Hill's condition to any certainty and that since her condition improved greatly while she was hospitalized, he had released her from the hospital and considered her as a well woman. He states that her

pains could have been caused by inflammation of the gall bladder or female organs and that there is also a possibility of appendicitis.

[1/2/63]

Mrs. Virginia Hill came to the office today in a quite sad and broken-hearted mood. She states that she left the Clark residence on 12-28-62 and is presently living with her maternal grandmother, Mrs. Irma Hill, 321½ Wilson Street, Sand Springs, Oklahoma. Mrs. Hill relates that she has been doing some serious thinking about her future and the future of her child. She has already filed for a divorce from the child's father. This young mother feels that she is quite immature and unable to plan for herself or her child and therefore, she would like to give the baby up for permanent adoption. She states that she loves her baby but that she feels she will never be able to give it the kind of home and care it needs. She plans to leave the state and get away from her undesirable relatives and background and try to start a new and better life for herself.

We talked with this young girl about the seriousness of this matter and advised her against making any snap decisions since once she signs the papers, giving her consent to adoption, this would be final and she would never be able to change her mind and have the child returned to her. However, Mrs. Hill states that she has seriously considered this situation from all angles and she feels that this would be the best plan for her and her baby. We told Mrs. Hill that we would contact Mr. Myers, Juvenile Court counselor, and make arrangements for her to be interviewed by the Judge and to sign the necessary legal documents in the presence of the Judge. We asked her to return to this office on 1-7-63.

We telephoned Mr. Myers, Juvenile Court Counselor, and informed him of Mrs. Hill's decision. He stated he would make the necessary arrangements for her to carry out her plan on 1-7-63.

[1/7/63]

On this date Mrs. Hill came to the office in time for her appointment at 11:00 a.m. She states that she still feels the best plan would be for Billy to be adopted and placed in a good home. She also relates that her husband's uncle and aunt, Gail and Jack Baker (address unknown, Sand Springs, Okla.) have filed an application to adopt a baby with some agency, and she asks that her child not be placed with these people because she doesn't want to know where the baby is placed. We interviewed Mrs. Hill at length, obtaining information for a complete social

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Caseworker
Tulsa Unit
1-18-63

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history of all relatives. This history will be prepared at a later date.

We took Mrs. Hill to the Juvenile Court Office, where she was interviewed by Mr. Larry Myers, Counselor; and by Tulsa County Juvenile Court Judge Dorothy Young. Mrs. Hill signed legal documents, giving consent to the adoption of her son, Billy Patrick Wayne Hill, in the presence of Judge Young. During this time she became quite emotional and cried. The Judge was very understanding and counseled with this young mother for quite some time.

Mr. Myers relates to us that the Court will serve notice to the father of the child, Darrell Wayne Hill, in the State Penitentiary at McAlester, and then a hearing will be held in the Tulsa County Juvenile Court and permanent plans will be made for Billy Hill.

[1/8/63]

Today we picked up Billy Hill at the Geren foster home and took him to Dr. John Kramer's office for his appointment. Mrs. Geren, foster mother, relates that the baby has a bad cold and again is having trouble breathing. Dr. Kramer diagnosed Billy's condition as bronchitis and gave him an injection of bicillin. The child was also given another blood test to determine if his iron deficiency has improved. Another appointment was set for 1-15-63 at 9:30 a.m.

/s/ HWA
HWA:hm

Complaint
[11/9/62]

A child somewhere the ages of about 9 months and one year, known to the Barnard Nursery, 1523 S. Utica, was placed in the nursery for one day about three weeks ago and as far as can be determined at this time, has been completely abandoned. When the mother left the child, she gave her name only as Mrs. Hill and said she lived in Room 313 at the Bliss Hotel. The manager of the nursery, Mrs. Hess, has tried several times to get in touch with the child's mother at the Bliss Hotel but every time the room is called a girl answered the phone who pretended to be her sister. This person whom Mrs. Hess talked gave first one excuse and then another for not coming to see about the child then finally said that she was sick and in a

the child then finally said that she was sick and in a hospital in Oklahoma City. A day or two ago Mrs. Hess called the room and the girl said her sister was still in the hospital. Mrs. Hess asked her what hospital she was in and she claimed not to know. Mrs. Hess then remarked over the telephone, well, I will just call all the hospitals in Oklahoma City and find out where she is when the woman replied, "I hope you die and go to hell". After the baby had been there about a week, Mrs. Hess told her one time when she talked to somebody if he will just come and get the baby you can forget about the bill because I am afraid he might get sick and I could not do anything for him. The girl remarked she had no way to take care of him. The Juvenile Court went to the nursery – picked up the baby and placed him in the shelter. This worker then called Mrs. Page, manager at the Bliss Hotel, and said the girl had been there, in fact, three girls had rented the room and they skipped out a few days ago not paying her anything for the room for the entire time they had been there. The girl who was supposed to have been the mother of this child was listed on their books as Virginia Hill. She is a small blond girl about 5 feet 2 or 3 inches in height, probably weigh about 95 or 100 pounds. She said she worked at the Mobile Club [illegible] called herself, Mrs. Jim Dalton, Virginia's sister. She was a [illegible]-haired, tall girl. The third girl had signed in as Annete Maybe. Mrs. Page gave the information that she had heard that the girls had gone [illegible] order [illegible] and said that the girl who said she was the mother of the baby was [illegible] pregnant again. She was reported to either have or had [illegible] other children. Mrs. Page then called a negro employee who worked for her at the hotel and had been in touch with the girls and thought he may have had [illegible] about these girls than she has had. However, as

[illegible] not [illegible] or did not care to give any information and was somewhat evasive in answering questions. He said the girls did not go to 302 Raeser Hotel but had a friend who lived there and that they had gone to that room to see him [illegible] last he had heard of any of the three girls – she of them [illegible] worked at the Mobile Club on South Peoria.

A petition was filed and the child was placed in the [illegible].

Case assigned to Myers and referred to the [illegible].

[/s/ Illegible]

Harold W. Arrowood
Caseworker
Tulsa Unit
2-14-63

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[1/14/63]

On this date Billy Hill was returned to Dr. Kramer's office. Dr. Kramer found his condition to be much improved and no medication was prescribed. Since this child seems to be in good physical condition and has had all required immunizations, Dr. Kramer asked that he be returned in two months for a checkup.

[1/30/63]

On this date a hearing was held in Tulsa County Juvenile Court. Parental rights of Darrel Wayne Hill and Virginia Hill were terminated and permanent custody of Billy Patrick Wayne Hill was given to the Department of Public Welfare with consent to adoption.

[2/14/63]

The following social information was learned from Mrs. Virginia Hill and is presented as an aid to be used in permanent planning for the child.

[Father]

Darrell Wayne Hill was born 9-11-40 in Sperry, Oklahoma. He is of slender build, 5'8" tall and weighs 145 pounds. His nationality is primarily [Dutch]-Irish. He has a fair complexion, blonde hair and blue eyes. Mr. Hill's education has been interrupted by his frequent confinements to penal institutions, however he has done 12th grade work in the McAlester Penitentiary. Mrs. Hill states that she believes her husband prefers the Catholic religion but that he actually has no religious beliefs. This man has asthma and as a child he had a heart murmur. He has always been a very nervous person and could be classified as an excessive drinker. He has also taken morphine and is a frequent user of vallo nasal inhaler. He has worked as a construction worker. He has never served in the armed forces. According to his wife, he is of an uneven disposition. He appears quiet and reserved around strangers but actually is the leader of the outlaw gangs in which he participates. Mrs. Hill relates that when she told her husband of her decision to place the baby for adoption, his reaction was that of resignation. Although he was not happy about the situation, he stated that he had expected it to happen.

Paternal Grandfather – William Leonard Hill, born in 1918, is deceased. He was approximately 5'11" tall and his weight was approximately 173 pounds. He had a medium complexion, dark brown hair, and blue eyes. His nationality was Black Dutch and Indian. His main occupation was

a truck driver. He was a victim of asthma and had a lung condition. This man was killed by law enforcement officials on July 3, 1962, when he was caught in the act of burglary.

Paternal Grandmother – Alta Marie Clark was born in 1919. She is approximately 5'5" tall and weighs 123 pounds. She is of fair complexion and has light brown hair and hazel eyes. She has a 10th grade education. Her nationality is that of the Irish, Dutch and Indian. She has worked as a waitress but has spent most of her life as a housewife. She is presently residing in Arkansas. This woman also has asthma and has had a cancer on her womb.

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Paternal Siblings – Waldrum Bill Hill is 24 years of age, is 6 feet tall and weighs 180 pounds. He is of medium complexion, has dark brown hair and hazel eyes. He has been employed as a construction worker and a truck driver and is presently serving a term in McAlester for burglary. Dennis Morris Hill is 19 years of age, is 6 feet, 2 inches tall and weighs 197 pounds. He is of medium complexion, has dark brown hair and hazel eyes. He has a 9th grade education and his occupation is that of a steel worker. He also has asthma. Phillip Dale Hill, age 16, is 6 feet tall and weighs 187 pounds. He has a fair complexion, blonde hair and blue eyes. He has a 10th grade education and is presently employed as a filling station attendant. He is in

good health. Carolyn Sue Hill is 13 years of age, 5'2" tall, and weighs 115 pounds. She has fair complexion, blue eyes and blonde hair. She is presently in the 8th grade and lives with her mother in Arkansas. According to Mrs. Hill, this girl has a condition diagnosed as possible Leukemia.

Mr. Hill also has three other half-siblings. They are known to Mrs. Hill only as Ronnie and Donnie, who were twins approximately 9 years of age; and Debra, who is 6 years of age. These three children have been adopted.

[Mother] – Letha Virginia Hill was born 9-3-44 in Tulsa, Oklahoma. She is of slight build, is 4'11" tall and weighs 92 pounds. Her nationality is Irish, German and Dutch. She has a fair complexion, light brown hair and hazel eyes. She has an 11th grade education and has worked as a fountain girl and as a magazine salesman. Mrs. Hill states that she was a premature baby and was a "blue baby" and that she was in and out of the hospital until she was 3 years of age. This young girl appears rather quiet and thoughtful. She states her main interests are those of a homemaker. She enjoys cooking and housekeeping. Regarding her pregnancy, Mrs. Hill relates that she always felt fine. She states that she did not seek medical attention until she was six months pregnant. According to her, the delivery was normal. She feels that she is presently in good health.

Maternal Grandfather – Richard Robert Hill was born 10-29-14. He is 5'8" tall, weighs 130 pounds and has a ruddy complextion with light brown hair and blue eyes. He has a 6th grade education and his nationality is Irish, Indian, Black Dutch and French. He was employed for many years at the cotton mill in Sand Springs. His current address is 303 Fairmont Ave., Hot Springs, Arkansas. This man has

been married five times, one of these marriages having been to the current Mrs. Alta Marie Clark, Billy Hill's paternal grandmother. Mr. Hill has a collapsed lung and an asthmatic condition.

Maternal Grandmother – Vida Mae Childress was born 10-24-16 and died in 1953 of cancer. She was approximately 4'11" tall and her weight was 130 pounds. She was of fair complexion, with dark brown hair. Her nationality was that of Irish, Black Dutch and Indian. She was employed for a time at the cotton mill

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at Sand Springs and her usual occupation was that of housewife.

Maternal Siblings – Inez Henderson is a half-sister of Virginia Hill. She is 28 years of age and presently resides in Ada, Oklahoma. Richard Robert Hill Jr. was born 12-1-42. He is 5'9" tall, weighs 167 pounds and has a ruddy complexion. He has dark brown hair, dark blue eyes and a 10th grade education. He also has a nervous condition and according to Mrs. Hill, he sometimes "shakes". He is presently serving time in the McAlester State Penitentiary for car theft. Lillian Jean Reynolds was born 3-19-46 and is 5'6" tall, weighing 125 pounds. She has a fair complexion, dark brown eyes and dark brown hair. She has a 9th grade education and has worked as a waitress. According to Mrs. Hill, this 16-year old sister has been married twice and has had a complete hysterectomy as a result of infection in the female tubes. Donita Wallice Hill, born 12-4-50,

is 4'8" tall and weighs approximately 85 pounds. She has a fair complexion, blonde hair and blue eyes. She is presently residing in the Sand Springs Home and attending Garfield School, where she is in the 5th grade.

[Billy Hill] – The following information concerning this baby was related by his mother. He was born 3-17-62 in Hillcrest Hospital, Tulsa, Okla. The attending physician was Dr. Rupp. The child weighed 7 pounds and 4 ounces at birth. He was bottle fed. According to his mother, he has been a healthy baby except for his asthmatic condition. He is also allergic to orange juice, wool and breaks out when given penicillin shots. He first sat up alone when he was four months old and pulled up at the age of 6 months. He was crawling when he was 5 months old.

This child is presently 21 inches high, weighing 18 pounds and 14 ounches. He has sandy colored hair, a fair complexion and hazel eyes.

/s/ HWA
HWA:hm

[/s/ JL]

Declaration by Arthur Athens

I, Arthur Athens declare under penalty of perjury, the following to be true to the best of my information and belief:

1. My name is Arthur Athens and from the time I was in second grade, I was a neighbor of Jeffrey Landrigan in Bartlesville, Oklahoma. Presently, I reside in Oklahoma City, Oklahoma.

2. I was six or seven years old and in the second grade when my family moved onto Smysor Street in Bartlesville. I attended Limestone Elementary School with the other neighborhood children, including Jeff Landrigan.

3. Jeff and I used to play together: we rode bicycles, shot BB guns, watched television and went to Bible study together at my home. Jeff and I played T-ball together in third grade, but Jeff quit after the first year. I think he was having trouble getting to the practice on time.

4. In my opinion, Jeff never had a chance. He had no supervision when he was growing up because both of his parents worked. From the fourth grade on, Jeff was a latchkey kid. He was the only kid I knew who had his own place until 6:00 or 6:30 p.m., when his parents got home from work. I think he got into more mischief because of this lack of supervision. Jeff's mom and dad were not like the other moms and dads. Dot, his mom, drank in the evenings. I never saw much of her but I know that she would come home from work and have cocktails.

5. In the fourth grade I had my first cigarette with Jeff. He stole a pack from his mom and we both smoked them.

6. In fourth or fifth grade, the Forrests moved into our neighborhood. Jeff started running around with Bobby Forrest, who was a year older than the rest of us. From then on, Jeff and Bobby were always a step ahead of the rest of them as far as getting into trouble. Jeff changed after his birthday party in fourth or fifth grade. He got a motor scooter and started spending more time with Bobby.

7. Jeff knew that he was adopted from a young age. It seemed to bother him and he said that he was not the Landrigans' "real" son. I told him that Nick was his father and he replied that he did not have a father.

8. Jeff never really opened up to me about anything and was a bit of a loner. He was not a team player. He would start something, like Scouts, and then he couldn't stay with it for some reason or another.

9. In seventh grade, Jeff hung out with the hoods at school. He let his hair grow long and wore a leather jacket. In junior high he moved into the basement of his house. He said that he wanted to do his own thing and get away from his parents. Jeff had a lock on his bedroom door.

10. I was scared of both Jeff and Bobby in the seventh grade. For a period of a few weeks I had to run home from the school bus stop each day because they would chase me and beat me up. They bloodied my nose a few times until my dad talked to Jeff's dad. They were bullies.

11. Once in the eighth grade I went over to Jeff's house to check on him because he hadn't been in school that day. The back door was open and I could hear music playing. I went in and found Jeff passed out. There was a bottle of tequila and some marijuana in the room. I was able to wake him up and then he went into the bathroom to throw

up. I figured if he was throwing up then he must be okay. I told my mom about it but she said that Jeff's mom would handle it.

12. In ninth grade, Jeff and Greg Brown got into trouble for smoking marijuana in the woodshop at school.

13. Also in the ninth grade, Jeff took drugs to the point that he almost passed out. I saw the shop teacher, an assistant principal, and a drafting teacher helping Jeff up to the principal's office because he could barely walk. Then an ambulance came and took Jeff away.

14. Greg Brown was a big influence on Jeff because they spent so much time together in high school. Jeff told me that Greg's dad was a big drug dealer.

15. When I was eighteen, I sold Jeff my 1971 Grand Prix before I left for college. He got drunk and wrecked the car. Then he got his sister's, Shannon's, car and got drunk and wrecked it. As far as I knew Jeff was not getting DUI's for this because he was wrecking the cars out in the country.

16. The week of Greg Brown's death, Jeff and Greg were taking some pills called "Purple ass kickers." Jeff told me that they had a big bottle of them over at Greg's house. I think they were downers.

17. I was never contacted by attorneys or investigators appointed to represent Jeff Landrigan at trial, on appeal, or in post-conviction proceedings. Had any attorney or investigator contacted me, I would have disclosed the information stated in this declaration, as well as other information. I also would have been willing to testify on Jeff's behalf at any proceeding.

I declare under penalty of perjury that the foregoing is true and correct.

Dated this 1st day of October, 1998.

/s/ Arthur Athens
Arthur Athens

Declaration by Donna Clark

I, Donna Clark declare under penalty of perjury, the following to be true to the best of my information and belief:

1. My name is Donna Clark and I am the mother of Kevin Clark. For many years I was a neighbor of the Landrigan family, including Jeff Landrigan. Jeff was friends with my son, Kevin. Presently, I reside in Bartlesville, Oklahoma.

2. I first met Jeff when he was around six years old. Jeff would come over to my house for Bible classes up until the time he was in about sixth grade. I taught the classes through Child Evangelism, a nationwide organization. Jeff was a good boy that gave me no trouble, unlike a few other little boys in the class.

3. When Jeff was somewhere in the age range of fourth to sixth grade, he got too rough with my boys once. They were playing touch football. I told him to leave the boys alone and he talked back to me and was cussing at me. I chased him home and his mother, Dot, told me that I was too rough on my children. I think Jeff could have benefitted from some "tough love." It did not seem like either Dot or Nick did much to try and discipline Jeff.

4. When Jeff was in around seventh grade, unbeknownst to me, he was inside my house and took some photos out of my house without my permission. Jeff then showed these photos to another neighbor boy. I was very upset and never got the photos back. I was informed of this by the mother of the boy that he showed the photos to.

5. It was common knowledge that Dot was an alcoholic. In later years Nick drank too but that was much later. The Landrigans did not socialize with the other neighbors.

6. I was never contacted by attorneys or investigators appointed to represent Jeff Landrigan at trial, on appeal, or in post-conviction proceedings. Had any attorney or investigator contacted me, I would have disclosed the information stated in this declaration, as well as other information. I also would have been willing to testify on Jeff's behalf at any proceeding.

I declare under penalty of perjury that the foregoing is true and correct.

Dated this Oct. 1 day of October, 1998.

/s/ Donna Clark
Donna Clark

Declaration by Kevin Clark

I, Kevin Clark declare under penalty of perjury, the following to be true to the best of my information and belief:

1. My name is Kevin Clark and my family lived in the same neighborhood as the Landrigans, including Jeffrey Landrigan, in Bartlesville, Oklahoma. Presently, I reside in Carrollton, Texas.

2. Jeff Landrigan was known to me as "Jefty." I was friends with Jefty from about second through ~~fourth~~ [sixth] grades. We were around each other in group activities; Jefty was one of the gang. He was seven or eight years old when I met him and he was quiet and shy. He fit right in. He looked like us, acted like us.

3. As Jefty grew older, around fifth or sixth grade, he became more defiant towards adults, especially women. He would yell at his mother and she seemed unable to get him to cooperate with her. When he was in fourth or fifth grade she would just give up if she couldn't get him to do something. From my perspective, I found it shocking the way Jefty could talk to her.

4. As a child, I did not realize that Jefty's mom, Dot, was an alcoholic. Years later my mom told me that Dot was an alcoholic. Looking back, I can see signs of her alcoholism. She would come into a room and be confused.

5. Jefty began spending time with the Forrest brothers, especially Bobby, around fifth grade. This seemed to influence his behavior and he became more of a bully. Bobby Forrest was hard to control.

6. From second to fourth grade, Jefty and I would occasionally get into scuffles. Jefty was usually not a good fighter and would ~~always~~ [usually] lose. When Jefty started spending time with Bobby, though, he had a large pocketknife. By fifth grade I did not want to get into a fight with Jefty because he was becoming a bully and I always had it in the back of my mind that he carried the pocketknife. I was afraid that he would use the knife. Jefty, Bobby and Dale were also taking judo lessons. In sixth grade I threw Dale into some bushes and Dale told Jefty about it. I backed down from Jefty because I didn't know if he would quit when I said "uncle" or "I give" like the other kids would.

7. By fourth grade, Jefty was "heading off track." By fourth or fifth grade, he was becoming mean. I feel sort of bad for Jefty because he was not in a perfect home. The Landrigans' parenting style would not suit a strong willed, independent child. I often thought that if Jefty had been raised by my parents, who were very strict, that he would have turned out fine.

8. In junior high, Jefty hung out on the sidewalk where the hoods hung out. He was out there smoking cigarettes with a rough crowd.

9. In eighth or ninth grade, Jefty got arrested at school. The rumor was that he'd beaten up his mom. He was around fourteen at the time.

10. In eighth or ninth grade, I saw Jefty being taken out of school. He had overdosed and could hardly walk. There was a principal and someone else almost dragging Jefty out.

11. Jefty had a "whole lot of freedom" even when he was only fourteen. His parents bought him a motorcycle – they were legal on the streets in Oklahoma if you were at least fourteen. Jefty would ride across town to see friends.

12. When Jefty was around sixteen his dad bought a nice boat. Several years later I saw the boat and it was in poor condition. It was all beat up looking and I suspected that Jefty took it out with his drug buddies.

13. I was never contacted by attorneys or investigators appointed to represent Jefty Landrigan at trial, on appeal, or in post-conviction proceedings. Had any attorney or investigator contacted me, I would have disclosed the information stated in this declaration, as well as other information. I also would have been willing to testify on Jefty's behalf at any proceeding.

I declare under penalty of perjury that the foregoing is true and correct.

Dated this 10th day of October, 1998.

/s/ Kevin R. Clark
Kevin Clark

Declaration by Joe Harris

I, Joe Harris declare under penalty of perjury, the following to be true to the best of my information and belief:

1. My name is Joe Harris and I went to junior high and high school with Jeff Landrigan in Bartlesville, Oklahoma. Presently, I reside in Bartlesville, Oklahoma.

2. During the time that Jeff and I were in junior high, it was a time of rebellion by youth. It was the early to mid 1970's and the rebelliousness of the 1960's was still being felt in our community.

3. If you were a completely straight kid in the Bartlesville community back then, you were completely ostracized by the other kids. Bartlesville was a wealthy community. When you have all of that money available then anything that you want is then also available. There were lots of drugs available to us when we were in junior high.

4. In junior high, we smoked a lo of marijuana. Jeff and Greg Brown were both really into pills. Greg drank a lot of alcohol and used a lot of Seconal. We all used some pills called "purples" as well as Seconal, Thorazine, Valium, speeders and Placidyl. When Greg was under the influence he was very aggressive and mean. I never really had any problems with Jeff though. He only went off when he was threatened.

5. The crowd that Jeff and I hung around with was a pretty rough group. Many of the people of that group are either dead or in prison. Two of our friends, Randy Florence and Johnny Orr, died in a motorcycle accident. Another friend, Robin Brookshire, is in prison for killing a man. Another friend, Brian Cunningham, shot and killed

himself. Our friend, Lance Booth, is in prison. Jeff's ex-wife, Sandy Martinez, was a mistake from day one. The graduating class of 1980 was just poison.

6. At our junior high there were stabbings and a lot of racial tension. Most of the students I knew were carrying loaded firearms to school – that was just how it was. I carried a loaded weapon to school but Jeff did not carry a gun; he carried a knife. The school was fairly chaotic. Drug transactions took place outside where the smokers hung out and sometimes transactions even took place in the classrooms.

7. Greg Brown was one of the primary drug sellers at our junior high. It was actually Greg's father that was sending Greg to school with the drugs and having him sell them.

8. The kids that dealt drugs at school had a system: you could owe them money and pay them later for the drugs they gave you. Bartlesville was a wealthy community and you could obtain whatever drugs you wanted. There were students passing out in classrooms and the teachers would sometimes just let them sleep. The average age to start smoking marijuana in Bartlesville was around seven or eight years of age. By junior high you were taking pills. Jeff definitely had a drug problem.

9. There were kids that were stealing cars during those years as well. Jeff and Greg were stealing cars and things were getting serious quick for them. By the time we entered high school I did not have as much contact with them because they were both in and out of school.

10. Jeff knew that he was adopted and it was a tender spot with him. Jeff's birth family was a mystery to him.

The Landrigans were fairly well off though and he had a nice car when most of the kids had clunkers.

11. I was told by a friend that Jeff's mom was an alcoholic. I had been over to Jeff's home a number of times but I never saw Jeff's parents at home. Jeff had his own separate living quarters in the basement of their house. There was no sign of parental supervision in Jeff's life that I could see and I never saw any sign of a father figure in Jeff's life. I was never aware that Jeff had a sister.

12. At the time Jeff was growing up in Bartlesville, the city had no social outlets for kids. Jeff had little controls placed on him at home and at school and he rebelled against whatever authority there was at the time because it was the thing to do.

13. I was never contacted by attorneys or investigators appointed to represent Jeff Landrigan at trial, on appeal, or in post-conviction proceedings. Had any attorney or investigator contacted me, I would have disclosed the information stated in this declaration, as well as other information. I also would have been willing to testify on his behalf in any proceeding.

I declare under penalty of perjury that the foregoing is true and correct.

Dated this 1/10/98 day of October, 1998.

/s/ Joseph D. Harris Sr.
Joe Harris

Declaration by Jane Shannon

I, Jane Shannon declare under penalty of perjury, the following to be true to the best of my information and belief:

1. My name is Jane Shannon and I am a retired juvenile probation officer. Jeff Landrigan was on my caseload as a juvenile offender in Bartlesville, Oklahoma. Presently, I reside in Bartlesville, Oklahoma.

2. I first met Jefty, as he was known to me, when he was fourteen years old. I inherited his case from someone else's caseload. There was something about Jefty that I found very appealing. He sent me a letter from Boley, a facility for delinquent boys. Boley and Helena were the last stops in the Oklahoma juvenile justice system before McAllester, the adult prison.

3. When I saw Jefty at Boley, he was in the custody of the Department of Human Services. To the best of my recollection, Jefty was in Boley because he'd stolen some cars. He was also picked up by the police frequently for violating curfew. None of this was anything major but it did seem to show a pattern with Jefty's behavior.

4. I liked Jefty very much and also liked his adoptive parents, Dot and Nick Landrigan. Jefty caused them much sadness. I tried to get Jefty to talk about things at home but he was very quiet. I had heard from other probation officers that Dot drank a lot. Every time I asked Jeff about this though, he would change the subject; he didn't want to talk about it. Dot did tell me about some physical fights between them, Dot and Nick, and Jefty.

5. Jefty was an angry child. He may have been angry about being adopted. The Landrigans never kept that fact

from him. He would tell me what he thought I wanted to hear about his being adopted such as how lucky he was to be adopted by the Landrigans. I knew that Jefty was evading the issue but I still tried to make headway with him.

6. When Jefty was sixteen or seventeen, he got a girl pregnant. The girl had a miscarriage and Jefty dropped her. Around this same time, there was an interdepartmental hearing regarding Jefty. I wanted to send Jefty back to Boley because I thought this would be his last chance before he turned eighteen. Jefty's parents hired a good attorney to represent him though and Jefty was allowed to go home with them. They all said that he would do fine. I knew that it would not be fine.

7. Jefty drank and did a lot of drugs. He spent quite a lot of time in the county jail back then. This was during the time when juveniles were placed in the county jail. It did not seem to phase him.

8. Jefty and his friend Greg Brown both used a lot of drugs and alcohol. They both got into the drug crowd when they were real young. There was a much bigger drug problem in Bartlesville than anyone was willing to acknowledge.

9. During the incident that resulted in Greg's death, Jefty and Greg both got out of their skulls at the time, drinking and drugging.

10. After Jefty's murder conviction in Oklahoma, both Dot and Nick finally "signed off emotionally" from Jefty.

11. I was never contacted by attorneys or investigators appointed to represent Jefty at trial, on appeal, or in post-conviction proceedings. Had any attorney or investigator

contacted me, I wold have disclosed the information stated in this declaration, as well as other information. I also would have been willing to testify on Jefty's behalf at any proceeding.

I declare under penalty of perjury that the foregoing is true and correct.

Dated this 10th day of October, 1998.

/s/ Jane Shannon
Jane Shannon

Declaration by Sandra Martinez

I, Sandra Martinez, declare under penalty of perjury, that the following to best of my information and belief:

1. My name is Sandra Martinez and I am the ex-wife of Jeffrey Landrigan. I reside in Bartlesville, Oklahoma.

2. Jeff and I went to junior high school together. He was good friends with my brothers and my cousins. Jeff was a sweet but ornery kid back then.

3. When we were approximately fourteen years old, Jeff and I would get stoned together. I sold Jeff marijuana back then, about one or two joints, two times a week.

4. I did not see Jeff again until I was 17 or 18 years old. I met Jeff in 1980 at the Stratford House rehabilitation center in Austin, Texas where we were both undergoing drug treatment. I was placed in the rehab center because I overdosed on Quaaludes. People thought I was trying to commit suicide but I ~~was just trying to get high~~ [had a drug addicts blackout and overdosed]. Jeff was kicked out of the program because they thought he had stolen prescription drugs from a drug store.

5. Jeff overdosed on Quaaludes before he graduated from high school, when he was approximately 16 or 17 years old. His family found him overdosed in the basement and had to call an ambulance for him. Jeff went into drug treatment several times that I know of.

6. Against the advice of my counselor, I began dating Jeff at the rehab center. When I received a weekend pass I spent my first night out of the center at Jeff's apartment. I remember opening up a cupboard at the apartment and it was full of pills. Jeff told me he would get rid of the pills.

[If you want to ad: that it was agreement in order for us to stay together.]

7. A month or two later I was released from the rehabilitation program and moved in with Jeff and his roommate. About a week later Jeff was arrested by DEA/narcotics agents for the burglary of a drugstore. I borrowed money from my mom to fly home to Oklahoma and Jeff's dad, Nick, bonded him out with $5,000 cash. Nick and I then drove back to Texas and brought Jeff home to live with his dad [and mom] in Bartlesville.

8. Jeff and I began to date again. He was jealous and possessive of me. One night after a party he dropped me off at home. He honked the horn for me to come back out and talk to him. When I wouldn't come back outside he became so angry that he backed his car into my mother's front porch. He then drove off, ran off the road, and [later] was arrested for possession of marijuana that night.

9. When Jeff would drink or get loaded, he would sometimes cry and talk about the fact that he was adopted. I think he and I got married to ease his pain and so he would have something to look forward to. We were married in February of 1981 in Bartlesville. Neither of us graduated from high school.

10. Three weeks after our marriage, Jeff went to prison for the marijuana possession. He served three or four months and was then released. Upon Jeff's release, his parents rented an apartment for us for a few months. They said that it was their wedding present to us since we didn't get to have a honeymoon. For those few months, Jeff's parents paid for everything and we did not have to work. We were young and all we did was drink and get high. We

smoked marijuana in the mornings, when we got home from work and before we went to bed.

11. Jeff was into pills: downers, Valium, Nembutal, dope, as well as alcohol. He used barbiturates, sedatives, and alcohol. It is difficult for me to quantify Jeff's drug intake because he did a lot of it behind my back.

12. Jeff was an alcoholic. When he drank, he usually got drunk. He could not have just one or two drinks.

13. In Jeff's adoptive family he had all of the material things he could ever need; Dot and Nick provided very well for him. They bought him everything he ever wanted, such as a new car. They even supported his drug habit, unknowingly, by giving him money. However, they were always letting other people deal with him and his problems, like doctors or the rehab centers. Whenever he got into trouble, they always bought him out.

14. Jeff and his adoptive mother, Dot, did not have a good relationship. Nick, his father, was more laid back. Dot, however, would scream and holler. She was mentally abusive to Jeff. Dot was an alcoholic.

15. Dot used to drink whiskey but she eventually got to where all she drank was vodka. She would start drinking at 5:00 a.m. and then go to work. Then she would resume drinking upon her return home from work. Nick did all of the housework and worshiped his wife. He didn't touch alcohol. I eventually took over the cooking and cleaning from Nick because when I came into the family he was getting older. We had a nightly routine with Dot: we fed her dinner between 8:30 and 9:00 p.m., she'd pass out around 9:30 p.m. and we would put her to bed.

16. After Jeff was sentenced for the Greg Brown incident, Dot's employer basically forced her to retire. Then she would drink at home all day. After she had a seizure she had to be placed into a nursing home.

17. On the night that Greg Brown died, Jeff had been drinking at home before we went to the party. At the party, Greg and Jeff were playing quarters with beer and whiskey. The two of them argued over the word "punk" and Greg pushed Jeff up against a wall. He wouldn't let Jeff leave so I tried to hold Greg so Jeff could leave. Jeff went outside and Greg followed him. He backed Jeff up against the trailer, shoved him into the wall and said that he was going to kill him. One of them had a piece of aluminum off of the trailer in their hand but I do not recall which one of them it was. Greg pulled his hand back like he was going to hit Jeff and Jeff put his arm out. I thought he was hitting Greg until I saw the ~~knife~~ [blood]. I yelled for people to call 911 but they all hid their drugs and guns first. It took the ambulance 25 to 35 minutes to get to the trailer because they got lost in the trailer park. Greg died before they got him to the hospital. Jeff took off on foot but turned himself in later that night. He knew what Greg was capable of because he'd seen Greg beat people up before. Greg was a big guy: 6'1", 225 lbs.; Jeff was little: 5'7", 180 lbs.

18. Jeff had a court appointed attorney with no prior murder trial experience for his trial in Oklahoma. The attorney was so bad that he was going to leave Greg Brown's mother's friend on the jury until I point out the relationship to him and she was not allowed to sit as a juror. The investigator that assisted before trial, George Yoacham, was not a real investigator either. He was a kid from a wealthy family that owned Yoacham's Saddle Shop.

He did not know what he was doing either. Jeff received a life sentence in this case that was eventually reduced to 40 years: 20 in, 20 out.

19. Jeff was sometimes violent when he drank. He would push and get aggressive by throwing things.

20. Jeff has been institutionalized since he was a young boy. He spent time in juvenile facilities, rehabilitation centers, and then in prison.

21. I was sentenced to four years in prison in 1996 for [()possession of cocaine[)] [Revocation of probation] I ended up serving 63 days and got my GED while I was in prison.

22. Jeff and I have one daughter together. When she was a little over a year old, Dot accidentally dropped her in the bathtub. Dot was drunk at the time and our daughter had bruises as a result. I would not take my children back over to Dot's and Nick's after that. Dot retaliated by telephoning Child Welfare Services to do a welfare check on my children.

23. When our daughter was between the ages of 9 and 12 she chased her older brother through the house with a butcher knife. She was angry because he had been teasing her. She threatened to kill him.

24. Our daughter was kicked out of school two times in seventh and eighth grade for cussing her teacher out. This past year she was kicked out from November through January for the same reason. She was kicked out again three days before school let out. Our daughter was coming home or being sent home from school every other week. She was out of school during October, November, and December of 1997. Three weeks after she returned to school, she was kicked out again.

25. Our daughter started skipping school at the age of thirteen. Jeff was a delinquent by the age of nine and I was skipping school by the age of 12½. I lived in a home by the time I was fourteen and was on my own at fifteen. Because of my background and Jeff's background, I am very concerned about our daughter.

26. Our daughter is currently in treatment for behavioral problems at Shadow Mountain hospital in Bartlesville. She is still working on her education but in addition is receiving individual and group psychotherapy [and counciling].

27. Jeff and I divorced after he went to prison for the murder of Greg Brown.

I declare under penalty of perjury that the foregoing is true and correct.

Dated this 14th day of November, 1998.

/s/ Sandra D. Martinez
Sandy Martinez

Declaration by Otis Schellstede

I, Otis Schellstede declare under penalty of perjury, that the following it true to the best of my information and belief:

1. My name is Otis Schellstede and I was one of Jeff Landrigan's teachers at Central Middle School in Bartlesville, Oklahoma. I knew Jeff as "Jefty."

2. Jefty was one of my students. I liked him very much and thought he was a real good boy. His father worked for City Services and his parents were both fine people.

3. Jefty's troubles began when he started hanging around with Greg Brown. Greg Brown was smart and clever. He was a leader and Jeff was a follower.

4. I used to follow Greg Brown around in the halls at the school trying to catch him with drugs. I was not able to catch him. I once went to Greg's father, Mr. Brown, to try and talk to him about Greg. I found his father intimidating.

5. To the best of my recollection, Jefty was one of the first students that I ever had to send to the hospital to have his stomach pumped for drugs.

6. I was never contacted by attorneys or investigators appointed to represent Jefty at trial, on appeal, or in post-conviction proceedings. Had any attorney or investigator contacted me, I would have disclosed the information stated in this declaration, as well as other information. I also would have been willing to testify on Jefty's behalf at any proceeding.

I declare under penalty of perjury that the foregoing is true and correct.

Dated this 1st day of October, 1998.

/s/ Otis Schellstede

Declaration of Robert Martinez

I, Robert Martinez declare under penalty of perjury, the following to be true to the best of my information and belief:

1. My name is Robert Martinez and I am the brother of Sandy Martinez, the ex-wife of Jeffrey Landrigan.

2. I first met Jeff when I was hitchhiking with my cousin, Eric Blackfox. I did not become close to Jeff until 1981 when he married my sister, Sandy.

3. Jeff's adoptive mother was an alcoholic. She was always drunk. She drank hard liquor – vodka – and was an arrogant drunk. Jeff and his mother had a bad relationship. They would argue, fight, holler and scream when Jeff wanted money.

4. Jeff got along better with his adoptive father, Nick. If Jeff didn't have the money for rent, Nick would cover it for him.

5. Jeff didn't talk about his childhood but it looked to me like he'd had everything he'd ever wanted from a material point of view.

6. Jeff was really good with Sandy's son, Chris. He treated him well and tried to be a good father to him.

7. On the night of Greg Brown's death, I was at the party with Jeff and Sandy. Jeff was pushed into the altercation and it was a freak situation. Greg pushed Jeff around in the trailer and continued as the instigator outside of the trailer with Jeff.

8. Greg was known throughout school to be violent. He was a large man: 6'1", 220 pounds. He drank and did a lot of downers. Greg was a Quaalude guy.

9. Greg and Jeff called each other "punk" that night and Greg went off on Jeff. This was after they had played quarters, a drinking game, with whiskey. My sister Sandy and I were the only sober ones there. Greg threw Jeff into the wall and told him he was going to kick Jeff's ass. After the stabbing, Jeff freaked out and took off running.

10. There were three other people at the party besides us. One of them was going to shoot Jeff after the stabbing and they waited to call the ambulance. It seemed like it took the ambulance forever to get to the trailer. It was probably 20 minutes before the ambulance arrived. Other witnesses at Jeff's trial perjured themselves. I was the one who brought up how the other people at the party were going to shoot Jeff after the stabbing and how they had waited to call the ambulance.

11. Jeff's biological daughter is just like Jeff when he was young. His daughter currently lives with me because she needs more structure than her mom can provide for her. She is also attending Shadow Mountain hospital for education and treatment.

x. I was never contacted by attorneys or investigators appointed to represent Jeff Landrigan at trial, on appeal, or in post-conviction proceedings. Had any attorney or investigator contacted me, I would have disclosed the information stated in this declaration, as well as other information. I also would have been willing to testify on Jeff's behalf at any proceeding.

I declare under penalty of perjury that the foregoing is true and correct.

Dated this 1st day of October, 1998.

/s/ Robert Martinez, Jr.
Robert Martinez

Declaration by George LaBash

I, George LaBash, declare under penalty of perjury the following to be true to the best of my information and belief:

1. I am an investigator employed by the Office of the Maricopa County Public Defender. I have been employed by the office for approximately thirteen years. In 1990, I was the supervising investigator of Group B in the public defenders office.

2. On or about March 2, 1990, I was assigned by the office to the case titled "Jeffrey Page." Jeffrey Page is known to me as Jeffrey Landrigan. Dennis Farrell, an assistant county public defender, was the attorney assigned to the case.

3. Mr. Farrell did not ask me to do much on the case. I did not interview Mr. Landrigan nor did I attend the trial. My role was limited to what Mr. Farrell directed me to do.

4. During my investigation, I was instructed to only deal with the facts of the case. I would not perform a task or conduct an inquiry that I was not specifically instructed to perform.

5. I am not aware of whether Mr. Farrell conducted an investigation, or if he did, the extent of his investigation. Mr. Farrell and I did not coordinate with each other and I found this to be quite frustrating. For example, during the time the investigation was being conducted, I did not know that a psychologist met with Mr. Landrigan. I only learned of that fact recently.

6. In all, I worked thirteen hours on Mr. Landrigan's case. One hour of that time was spent waiting at the

county motor pool for an automobile. It turned out that no car was available for use on that date.

7. On one occasion I had a brief telephone conversation with Mr. Landrigan's mother. That conversation was limited to a guilt/innocence issue. Other than that brief encounter, I had no contact with any member of Mr. Landrigan's family.

8. If I would have been asked to conduct research or investigation regarding a client's family history, I would have done so because it was my responsibility. At that time and to present date, I have never conducted a mitigation investigation.

9. I do recall that after Mr. Landrigan's case, I attended a seminar where I was instructed about mitigating evidence and sentencing investigation in capital cases. That was the first time I became aware of the necessity for conducting an investigation for the sentencing hearing in a death penalty case.

10. At the time of Mr. Landrigan's trial, the caseload in the county public defenders office was extremely high. In addition, the office was "budget oriented" regarding out of town travel. The office would not approve out of town travel for the investigators.

I declare under penalty of perjury that the foregoing is true and correct.

Signed this 21 day of September, 1998 at Phoenix, Arizona.

/s/ George LaBash
George LaBash

[Handwritten In Original]

The poem is from Jeff after he found out who and where I was and I had not been to vist him any more after the 1st vist in Cummins Okla.

Jeff's adopted mother told me that from the age of 5 yrs. on he would beg her to tell him who his natural parents were. They refused so he found out by getting into their safe and finding his paper work so he knew Darrel Wayne Hill & I were his natural parents. He became obsessed with finding us. He took to drinking at a very early age because Dot his moma was an alcoholic (and she would walk around nude in front of him) and I believe that with Dot & Nick drinking & partying with all their socalite friends and his desire to be a "normal" child and the blood link to Darrel & I are what has messed up his whole life. Darrel went to prison when Jeff (Billy Patrick Wayne Hill) Landrigan was 3 months old. I was 17 by then no job exp. but I took a job at the Lot a burger-in Tulsa and tried to keep him. I had no help from anyone and when I applied for welfare assistance they took my baby, by order of Judge Lamb. Harold Arrowood was the social worker who took my baby and delievered him to the Landrigans. I lost all desire to live for 10 years then I pulled out of it and got away from my former life & so-called friends. Darrel killed a policeman at a road-side park in Ark. somewhere, he's on Death Row in Ark., has been for about 10 or 11 years. Jeff is <u>just</u> like him! They look alike, talk alike, sound alike and think alike. Jeff needs help mentally like his father did.

Thank You
/s/ Virginia Gipson
(602) 342 3861 home
602 344-8841 work

Declaration by Mickey McMahon

Mickey McMahon declares under penalty of perjury the following to be true to the best of his information and belief.

1) I am a psychologist licensed to practice in the State of Arizona, although I have only been in a very small part-time practice since December of 1995 since the illness and death of my father. I have been certified and then licensed in Arizona from 1974 through the present. I received my doctoral degree in 1973 from Arizona State University. My area of specialization is Clinical Psychology.

2) I was retained by Dennis Farrell, trial counsel for Jeffrey T. Landrigan. Mr. Landrigan was facing a possible death sentence arising out of a homicide.

3) Mr. Farrell telephoned me and asked if I would conduct a psychological evaluation on Mr. Landrigan. I met with Mr. Farrell and informed hm that I would see Mr. Landrigan and obtain an initial impression, then report back to him regarding my impressions and suggest any further psychological avenues that needed to be pursued.

4) I recall an interview with Mr. Landrigan in which I obtained a clinical impression of him, a background history, and conducted brief psychological testing to aid me in gaining an impression of his personality and emotional status.

5) As a result of my initial and only meeting with Mr. Landrigan, designed to gain a first impression and delineate the necessary next steps to be performed, a number of questions were raised in my mind that needed

to be checked out before I could give any definitive opinion. However, those questions were never resolved due to the fact that I was not able to follow up on my concerns and observations in the usual and customary manner.

6) For example, I was not authorized to conduct the next step in psychological testing that would have told me if that there were any cognitive or neuropsychological deficits not observed during just an interview, and whether or not even more testing, as a third step, would be necessary to pin down any deficits found. I was also not authorized to seek information from records or significant others that might also have suggested deficits not typically seen in solely an interview. I was also not supplied, or given the opportunity to share, information such as might have been developed by an investigator.

7) I was then surprised by Mr. Farrell when he asked me to write a psychological reports since it was my understanding that only my impressions were sought after the initial meeting with Mr. Landrigan. I informed Mr. Farrell that I preferred not to write report based on only one interview with Mr. Landrigan. ~~H~~f [I /s/ MM] further stated that much more work was needed to provide an appropriate psychological study for a death penalty case, whether that work be done by myself or someone else.

8) Mr. Farrell informed me that the Public Defenders Office was operating under a tight budget and the office would not authorize the expenditure of more than $350 (the fee typically paid for much more minor offenses than first degree murder with the possibility of a death sentence).

9) Mr. Farrell then informed me that the Public Defenders Office required a psychological report, and I

could simply write up my impressions so the office would have something documented in the file. From the little that Mr. Farrell told me, it seemed that either he, or his superiors, wanted a written report to document the fact that something had been done. Mr. Farrell clearly stated that he needed a written report to justify the expenditure of funds to pay me what appeared to have been a predetermined $350 fee, regardless of what I found on my initial interview with Mr. Landrigan.

10) My experience with Dennis Farrell on this case was quite different from the working relationship I had with counsel on other death penalty cases in which the psychological study went through a series of steps, each step being reviewed for its completeness, and plans for further investigation and authorization for funds made prior to the authorization of the subsequent step. It was also my experience that counsel would brief me on relevant information an investigator had developed and/or set up meetings between myself and the investigator to share information and plan further information gathering. There was often a discussion of how to confirm information from independent sources, whether that involved the investigator conducting the interview with significant others or myself. None of this occurred with Mr. Farrell.

11) My conclusion was that I did not want to continue on the case under these conditions, although I did make an attempt to put as much unconfirmed information in the report I did agree to write as I could, in the hope that someone would follow-up on what I had done, even go much further. Whether or not that was done, I have no personal knowledge, never being contacted further on the case.

I declare under penalty of perjury that the foregoing is true and correct.

Signed this 3 day of November, 1998 at Phoenix, Arizona.

/s/ Mickey McMahon
Mickey McMahon

ARIZONA SUPERIOR COURT, PIMA COUNTY	CASE NO. **CR-28677**
	DATE: April 11, 1997
JUDGE: HON. JOHN LINDBERG	
COURT REPORTER: NONE	
STATE OF ARIZONA	Thomas J. Zawada
VS.	
JOHN PATRICK EASTLACK Date of Birth: 12/12/67	Carla G. Ryan Natman Schaye

Special Verdict in a Capital Case

(Filed Apr. 11, 1997)

This is the time set for sentencing in CR-28677, State of Arizona v. John Patrick Eastlack. On April 11, 1991, the defendant, John Patrick Eastlack, was adjudged Guilty by the Court, upon the jury verdicts in Counts 1-9.

There being no legal cause why the Court cannot now proceed with sentencing, first as to the capital counts 7 & 8, then as to the non-capital counts.

AS TO COUNTS SEVEN AND EIGHT, the first degree murder of Leicester Sherrill and Kathryn Sherrill:

The Court finds, based upon the jury verdicts herein, that the state has proven beyond a reasonable doubt the aggravating circumstance set forth in A.R.S. § 13-703(F)(8): the defendant was convicted by a jury of the first degree murder of Kathryn and Leicester Sherrill. Each conviction serves as an additional homicide with respect to the other, and thus satisfies this aggravating circumstance.

DATE 4-15-97 BY [Illegible] Deputy /s/ L.J. Rentschler Deputy Clerk

AS TO COUNT SEVEN, the Court finds, based upon the trial transcript herein, that the state has proven beyond a reasonable doubt the aggravating circumstance set forth in A.R.S. §13-703(F)(6), that the defendant committed the murder in an especially heinous, cruel, or depraved manner.

The murder was especially cruel as evidenced by the following facts: (1) the defendant knew or should have known that his actions would cause Mr. Sherrill to suffer both emotionally and physically; (2) Mr. Sherrill was not rendered unconscious by the defendant's first blow and he must have suffered great physical pain from his wounds until he died or lost consciousness; (3) Mr. Sherrill was found barricaded in a separate area of his home from his wife and, due to his separation from her at death, he must have experienced considerable mental anguish caused by his uncertainty as to her welfare and as to his own fate.

The murder was especially heinous or depraved as evidenced by the following facts: (1) the gratuitous violence inflicted upon the victim; (2) by reason of the victim's age and physical condition, the victim was helpless to resist or thwart the defendant.

AS TO COUNT EIGHT, first degree murder of Kathryn Sherrill:

The Court finds, based upon the trial transcript herein, that the state has proven beyond a reasonable doubt the aggravating circumstance set forth in A.R.S. §13-703(F)(6), that the defendant committed the murder in an especially heinous, cruel, or depraved manner.

The murder was especially cruel because: (1) the defendant knew or should have known that his actions

would cause Mrs. Sherrill to suffer both emotionally and physically; (2) because the evidence showed that Mrs. Sherrill was not rendered unconscious by the defendant's first blow but was alive for some period while she suffered additional violence and must have suffered great physical pain from her wounds until she died or lost consciousness; (3) the victim was found barricaded in a separate area of her home from her husband, and, due to her physical separation from her husband, she must have experienced considerable mental anguish caused by her uncertainty as to his welfare and as to her own fate.

The murder was especially heinous or depraved as evidenced by the following facts: (1) the gratuitous violence inflicted upon Mrs. Sherrill; (2) the fact that, by reason of her age and physical condition, Mrs. Sherrill was helpless to resist or thwart the defendant.

THE COURT having found two aggravating circumstances as to each capital count, the defendant is death eligible under Arizona law on both counts.

AS TO MITIGATION: as required by law, the Court has considered all relevant facts, documents, testimony, and arguments proffered by the defendant in determining whether to impose a sentence less than death. The Court finds that the following statutory mitigating factors listed in A.R.S. 13-703(G) have been proven by a preponderance of the evidence: (1) The defendant's capacity to conform his conduct to the requirements of law was significantly impaired, but not so impaired as to constitute a defense to prosecution; and (2) the defendant's age, by reason of his maturity level, at the time of the offense.

As to non-statutory mitigation, which the Court is compelled by law to consider, the Court finds to have been proven by a preponderance of the evidence the following:

(1) The effect of the defendant's genetic history;

(2) That the defendant suffers from fetal alcohol effect;

(3) That as a result of the combination of the defendant's genetic history and fetal alcohol effect, the defendant has a demonstrated limited ability to comprehend cause and effect;

(4) That as a result of the combination of the defendant's genetic history and fetal alcohol effect, the defendant has demonstrated impaired judgment;

(5) That, as a result of the combination of the defendant's genetic history and fetal alcohol effect, the defendant lacks control over behavior responses;

(6) The defendant's ability to function in a structured environment;

(7) The defendant's non-violent history.

Further, the Court finds that the mitigating circumstances relating to or caused by the defendant's genetic and biological background have been shown to have a connection to the defendant's conduct during the commission of the offense.

Having weighed these statutory and non-statutory mitigating circumstances against the aggravating circumstances, the Court finds that the mitigating circumstances are sufficiently substantial to call for leniency and that imposition of the death penalty would be inappropriate under the circumstances of this case.

Therefore, as to Counts Seven and Eight, it is ORDERED the defendant be committed to the custody of the Arizona Department of Corrections for two terms of life imprisonment, to be served consecutively. These sentences are to run from April 11, 1991, the date of the original sentencing in this matter.

NON-CAPITAL COUNTS

The defendant has been found guilty by jury verdict of Counts One through Six, and Count Nine of the indictment as follow:

Count One, second degree escape, a nondangerous, repetitive, Class 5 felony with two prior non-dangerous felony convictions in Pima County Superior Court Cases CR-17866, and CR-24268 committed on August 29, 1989 in violation of ARS 13-2503 (A)(1) and (B); 13-604 (C);

Count Two, burglary in the second degree, a nondangerous, repetitive, Class 3 felony with two prior nondangerous felony convictions in Pima County Superior Court Cases CR-17866, and CR-24268 committed on August 30, 1989 in violation of ARS 13-1507 and 13-604(D);

Count Three, burglary in the second degree, a nondangerous, repetitive Class 3 felony with two prior nondangerous felony convictions in Pima County Superior Court Cases CR-17866, and CR-24268 committed on September 1, 1989 in violation of ARS 13-1507 and 13-604(D);

Count Four, arson of an occupied structure, a nondangerous, repetitive Class 2 felony, with two prior nondangerous felony convictions in Pima County Superior Court

cases CR-17866, and CR-24268 committed on September 1, 1989 in violation of ARS 13-1704 and 13-604(D);

Count Five, theft by control (value over $100 but less than $250), a nondangerous, repetitive Class 6 felony with two prior nondangerous felony convictions in Pima County Superior Court Cases CR-17866, and CR-24286 committed on September 1, 1989 in violation of ARS 13-1802(A) and (C) and 13-604(C);

Count Six, burglary in the first degree, a nondangerous, repetitive, Class 2 felony, with two prior nondangerous felony convictions in Pima County Superior Court Cases CR-CR-17866, and CR-24268 committed on September 1, 1989 in violation of ARS 13-1507 and 13-604(D);

Count Nine, theft by control, a nondangerous, repetitive Class 6 felony, with two prior felony convictions in Pima County Superior Court Cases CR-17866, and CR-24268 committed on September 1, 1989 in violation of ARS 13-1802(A)(1) and (c) and 13-604(D).

NON-CAPITAL AGGRAVATION

As to counts 1 through 6 and 9, the Court finds the following aggravating factor: prior criminal record.

As to Counts 2 through 6 and 9, the Court finds the following aggravating factor: defendant was an escaped prisoner at the time of the offense.

The Court finds that none of the mitigating circumstances presented in this case are applicable to the non-capital counts or outweigh the forgoing non-capital aggravating factors.

SENTENCING ON NON-CAPITAL COUNTS

Count One: It is ORDERED defendant be committed to the custody of the Arizona Department of Corrections for the aggravated sentence of six (6) years and said sentence is to run consecutively to the sentence imposed in CR-24268 and Counts Seven and Eight in this case;

Count Two: It is ORDERED defendant be committed to the custody of the Arizona Department of Corrections for the aggravated sentence of twenty (20) years, which sentence is to run consecutively to Counts 1, 7 and 8.

Count Three: it is ORDERED defendant be committed to the custody of the Arizona Department of Corrections for the aggravated sentence of twenty (20) years.

Count Four: it is ORDERED that defendant be committed to the custody of the Arizona Department of Corrections for the aggravated sentence of twenty-eight (28) years.

Count Five: it is ORDERED defendant be committed to the custody of the Arizona Department of Corrections for the aggravated sentence of four and one-half (4.5) years.

As to Counts 3, 4, and 5, the sentences are to run concurrently with each other, but consecutively to the sentences imposed in Counts 7, 8, 1, and 2.

Count Six: it is ORDERED defendant be committed to the custody of the Arizona Department of Corrections for the aggravated sentence of twenty-eight (28) years.

Count Nine: it is ORDERED defendant be committed to the custody of the Arizona Department of Corrections

for the aggravated sentence of four and one-half (4.5) years.

As to Counts Six and Nine, the sentences shall run concurrently with each other, but consecutively to the sentences imposed in Counts 7, 8, 1, 2, 3, 4, and 5.

The sentences herein imposed are to commence and date from April 11, 1991, the date of the original sentencing, with nc credit for time served prior to that date.

FILED IN Court:
Commitment Order.
Appeal Rights

[Fingerprint omitted in Printing]

Fingerprint –
John Patrick Eastlack

/s/ John E. Lindberg
HON. JOHN LINDBERG

L.J. Rentschler
Deputy Clerk

Fingerprint on signature page.

Hon. John Lindberg
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Clerk of Court – Appeals
Attorney General – Tucson
Carla G. Ryan, Esq.
Natman Schaye, Esq.
Sheriff of Pima County – 2 cert.
Adult Probation – 1 cert./2 copies
Department of Corrections – 1 cert.